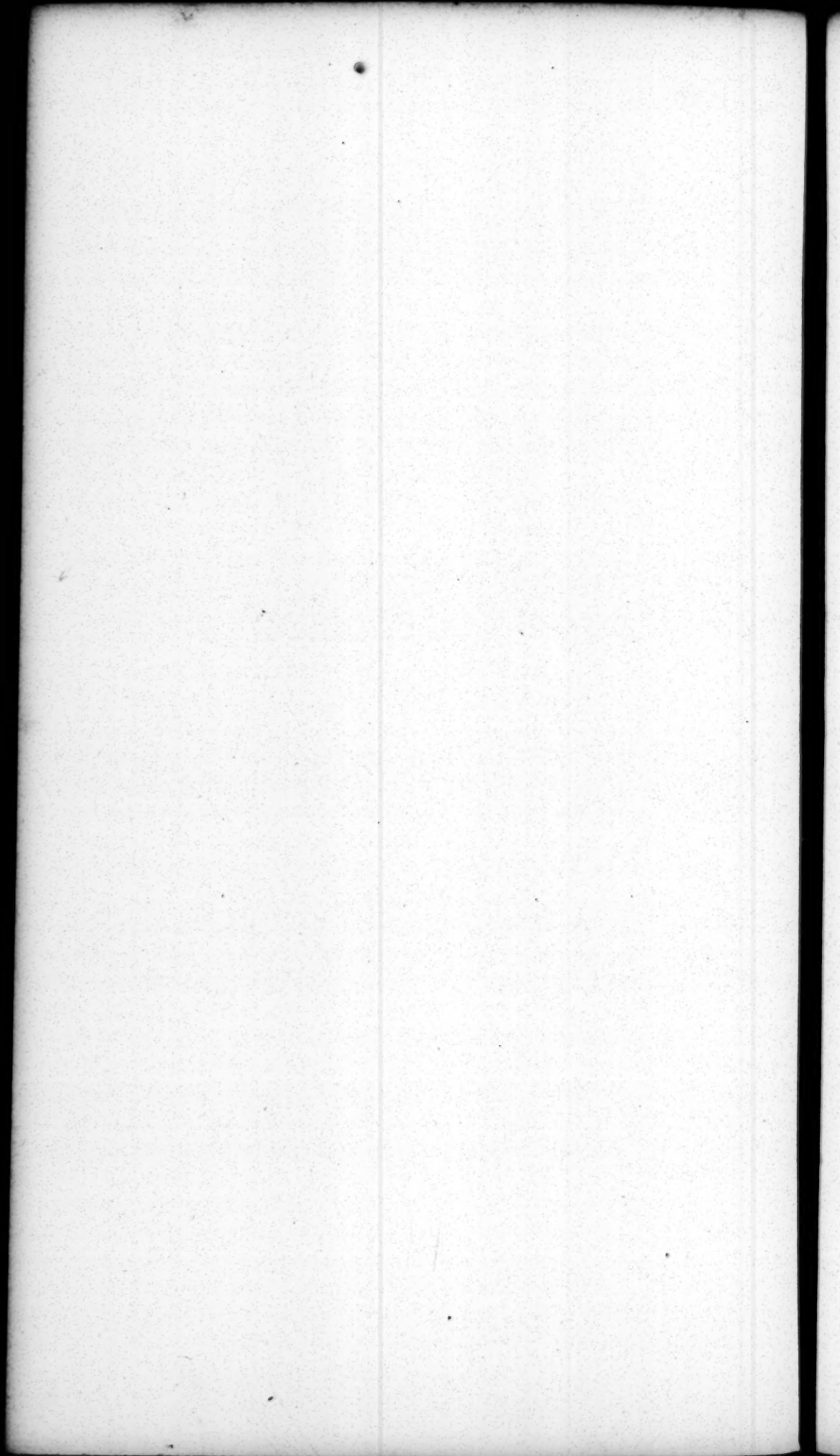


THE
Attorney's Practice

IN THE
Court of Common Pleas.

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VOL. II.

B



T H E

Attorney's Practice

I N T H E

Court of Common Pleas.

Abatement.

AND the said *E.* in her proper person cometh and defendeth the force and injury, &c. And prayeth judgment of the said writ, because she saith, that she on the day of suing out the said original writ of the said *R.* was under cover of one *W. J.* then and yet her husband, and alive, *to wit*, at *London* aforesaid, in the parish and ward aforesaid; And this she is ready to verify: Wherefore for that the said *W. J.* is not named in the said writ, the said *E.* prayeth judgment of the said writ, and that the same may be quashed, &c.

Plea in abatement, deft. under coverture at the time of the writ.

And the said *R.* saith, that for the reason before alledged his said writ ought not to be quashed, because he saith, that the said *E.* on the day of suing out the said original writ of the said *R.* *to wit*, on the first day of *February* in the — year, &c. at *London* aforesaid, in the parish and ward aforesaid, was sole, *Without this*, that the said *E.* on the day of suing out the said original writ of the said *R.* was under cover of the said *W. J.* as her husband, as the said *E.* hath above alledged: And this he is ready to verify: Wherefore for that the said *E.* doth not deny the said action of the said *R.* the said

Replication.

Traverse.

R. prayeth judgment and his said debr, together with his damages by occasion of the detaining that debt, to be adjudged to him, &c.

Rejoinder.

And the said *E.* as at first saith, that she on the day of suing out the said original writ of the said *R.* was under cover of the said *W.* as her husband, as she the said *E.* hath above alledged; and of this she putteth herself upon the country; *And* the said *R.* likewise, &c. *Therefore* it is commanded to the sheriff that he cause to come, &c.

Issue.

Another executor, nor named in the writ.

And the said *R.* by *R. R.* his attorney, cometh and defendeth the force, &c. *And* prayeth judgment of the said writ, because he saith, that the said *C.* in his life-time constituted and appointed him the said *R.* and one *W. C.* to be executors of his testament, and afterwards died, after whose death the said *W.* as executor of the testament of the said *C.* administered divers goods and chattels which were of the said *C.* at the time of his death, to wit, at *Westminster* in the county of *Middlesex* afore said, which said *W.* at *Westminster* afore said is still in being and alive; and this the said *R.* is ready to verify: Wherefore for that the said *W.* is not named in the writ afore said, the said *R.* prayeth judgment of the said writ, and that the said writ may be quashed, &c.

Replication.

And the said *T.* saith, that for the reason before alledged his said writ ought not to be quashed, because he saith, that the said *W.* after the death of the said *C.* as executor of the testament of the said *C.* never administered any goods or chattels which were of the said *C.* at the time of his death; and this he prayeth, &c.

Imparlance.

And now at this day, to wit, *Friday* next after the morrow of the holy *Trinity*, in this same term, to which day the said *P. D.* had leave to imparl, and then to answer, &c. before our lord the king at *Westminster* cometh as well the said *E. P.* by his said attorney, as the said *P.* by *J. G.* his attorney, and the said *P.* defendeth the force and injury when, &c. *And* prayeth oyer of the said writing; and it is read to him in these words, to wit, To all, &c. Which being read and heard, the said *P.* prayeth judgment of the said original writ sued out against him, because he saith, that in the said writ there is material variance between the said writ and the said writing upon which the said declaration is founded, as to the court here sufficiently appeareth; and this he is ready to verify: Wherefore for that variance the said *P.* prayeth judgment of the said writ, and that the said writ may be quashed, &c.

Oyer.

Plea in abatement, variance between the declaration and deed.

And

And the said *W.* in his proper person cometh and defendeth the force and injury above laid to his charge, and prayeth judgment of the said writ, because he saith, that he the said *W.* now is within the age of 21 years, (that is to say) of the age of 18 years, and no more, and was at that age, and no more, at the time of making those promises and undertakings, as by the aforesaid declaration of the said *T.* in manner and form aforesaid is declared: Wherefore the said *W.* prayeth judgment of the said writ, and that the same may be quashed, &c.

Plea in abatement in case sur assumpsit, defendant infra statem.

And the said *T.* saith, he ought not to be precluded from his said action against him the said *W.* because he saith, that the said money so paid, laid out and expended, and the said several businesses by him the said *T.* done and performed for the said *W.* was necessarily paid, laid out, expended, done and performed for the necessary use and benefit of the said *W.* and in no other manner, as in the declaration of him the said *T.* in manner and form as above is declared: And this he prayeth may be inquired of by the country, &c.

Replication for necessities.

And *John S.* against whom the writ aforesaid issued by the name of *T. S.* in his proper person cometh and saith, that he was baptized by the name of *John*, and at the time of the said *A.*'s suing out the said original writ was, and always before and since hath been called and known by the said name of *John S.* that is to say, at *W.* aforesaid in the county of *M.* aforesaid; without that, that he at the time of the said *A.*'s suing out his said original writ, or any time before or since, hath been or now is called by the name of *Thomas S.* as by the said writ is above supposed; and this he is ready to verify: Wherefore he prayeth judgment of the said writ, and that the said writ may be quashed, &c.

Plea in abatement, misnomer in the defendant's christian name.

J. Burland.

And the said *Philip Beach* in his own person cometh and prayeth judgment of the original writ of the said *Ambrose*, because he saith, that by the statute of additions made and provided, every defendant in every writ in which process of outlawry lieth, ought to be named and called in such writ of a certain mystery or degree, whereof such defendant is, or at the time of obtaining such writ was, or before had been; and this he is ready to verify: Wherefore, in as much as the said *Philip* by the said original writ is not called or named of any degree or mystery whatsoever, he the said *Philip* prayeth judgment of the said writ, and that the same may be quashed, &c.

Plea in abatement the want of addition.

G. Wilson.

And

Plea in abatement, that defendant is a prothonotary's clerk, and suable by bill only, and not by writ.

And the said *T.* in his proper person cometh and saith that he is, and long before the day of suing out the original writ of the said *W.* and at the same time was, and ever since hath been one of the clerks of *G. C.* esq; one of the prothonotaries of the court of our lord the king of the bench at *Westminster* in the county of *Middlesex*, daily attending in his office in the same court; and that he hath transacted, and doth transact in his said office, divers affairs of the said prothonotary, and of several subjects of our said lord the king, and hath drawn and written, and doth draw and write divers pleas in the same office, and carries on other affairs of the said prothonotary. And the said *T.* further saith, that by laudable and ancient custom, and according to the custom and law of the land, and the liberties and privileges of the same court, for time past used and approved hitherto, it has obtained, that all clerks of the prothonotaries of the court of our lord the king of the bench, exercising any affairs in any office of the same prothonotaries in the same court, ought not, and have not for the whole time aforesaid been used, according to the liberties and privileges of the same court of the bench aforesaid, for the whole time aforesaid used and approved, to be drawn or compelled other than in the same court of the bench, to answer before any secular judges, except before the justices of our lord the king of the same bench, by bill to be filed against such clerk in the office of such prothonotary, in which such clerk is, upon any plea or complaints (pleas of freehold, felonies and appeals only excepted); And this the said *T.* is ready to verify: Wherefore he prays judgment, if he the said *T.* ought to be compelled to answer to the said declaration, not being a bill filed against him the said *T.* in the office of the said prothonotary, &c.

Maynard v. Pippin. Trin. 12 IV.

Plea in replevin, property in a stranger. Lilly's Ent. 358.

Traverse.

AND the said *E.* and *S.* by *W. L.* their attorney, come and defend the force and injury, when, &c. and say, that at the time in which the taking the said cattle is supposed to be done, the property of the said cattle was in one *S. H.* who is now in being and alive, to wit, at *H.* aforesaid, in the county aforesaid; Without this, that the property of the said cattle at the time of the taking them, was in the said *J. M.* as he by his writ and declaration aforesaid above supposes; and this they

they are ready to verify: Wherefore they pray judgment of the said writ and declaration, and a return of the said cattle to be adjudged to them, &c. And for having a return of the said cattle, the said E. and S. bailiffs of A. B. and C. B. well acknowledge the taking the said cattle in the said place in which, &c. called H. and justly &c. because they say, that the said place called H. contains, and at the same time, in which the taking the said cattle is supposed to be done, contained in itself forty acres of pasture, with the appurtenances in K. in the county aforesaid; which said forty acres of pasture, with the appurtenances, are, and at the same time in which, &c. were the soil and freehold of the said A. B. and C. B. And because the said cattle at the said time in which, &c. were in the said place called H. aforesaid eating the grass then growing here, and doing damage there, the said E. and S. as bailiffs of the said A. B. and C. B. well acknowledge the taking the said cattle in the said place in which, &c. and justly, &c. so doing damage there: Wherefore they pray judgment and a return of the said cattle to be adjudged to them, &c.

Pro return.
habend.
Cognizance as
bailiff, damage
feasant.

And the said J. M. says, that his said writ and declaration aforesaid ought not to be quashed, because he says, that the property of the said cattle at the said time of taking them was in the said J. M. in manner and form as he by his said writ and declaration has thereupon above alledged, *to wit*, at H. aforesaid in the county aforesaid; and he prays that this may be inquired of by the country: And the said E. and S. do so likewise: It is therefore commanded to the sheriff, that he cause to come, &c.

Replication,
property in
plaintiff.

And the said Sir J. B. by J. L. his attorney comes and defends the force and injury, &c. and prays judgment of the said writ, because he says, that he the said Sir J. at the time of suing out the said original writ, and from that time continually afterwards hitherto was, and yet is a baronet only, and not a knight and baronet: *Without* this, that he the said Sir J. B. now is, or on the day of suing out the said original writ was a knight and baronet, as by the said original writ is above supposed; and this the said Sir J. is ready to verify: Wherefore he prays judgment of the said writ, and that the said writ may be quashed, &c.

Issue.

Plea, that deft.
is a baronet,
and not a
knight and ba-
ronet.
Lill. Ent. 5.
Salk. 50, 6.
Pract. Reg.
2, 3.

And the said M. and E. by A. F. their attorney, come and defend the force and injury, and pray judgment of the said writ of the said M. because they say, that on the day of suing out the said original writ of the said M. *to wit*, on the 23d day of January in the 17th year

Plea, that de-
fendants were
not married
according to the
ecclesiastical
law.

of Lill. Ent. 4.

See Andr. 227.

of the reign of our lord the now king, matrimony was not solemnized between the said *M.* and *E.* according to the ecclesiastical law of this kingdom of *Great Britain*; and this they are ready to verify: Wherefore they pray judgment of that writ, and that the said writ may be quashed, &c.

Nash Grofs.

Plea that defendant is an attorney.
Lill. Ent. 9.

And the said *J. C.* in his proper person comes and defends the force and injury, and says, that he long before the exhibiting the said bill of the said *D.* and at the same time, and continually afterwards, was and yet is one of the attornies of the court of our lord the king of the bench at *Westminster* in the county of *Middlesex*, as by process under the seal of the same court to this plea annexed more fully appears; and that he prosecutes and defends divers pleas and causes of divers and many subjects of our said lord the present king in the same court of the bench aforesaid, as their attorney there: And the said *J.* says, that he and all other attornies of the same bench prosecuting and defending for their clients in the same court, by laudable and ancient custom, and according to the law of this kingdom of *England*, and the liberties and privileges of the same court of the bench aforesaid, from the time to the contrary whereof the memory of man is not, used and approved, ought not, nor at any times past, have been accustomed, according to the liberties and privileges of the said court of the bench aforesaid for the whole time aforesaid used and approved, to be drawn or compelled against their will, to answer before any justices or ministers of our lord the king, or other justices whatsoever in any court, except before the justices of our lord the king of the bench aforesaid at *Westminster*, upon any pleas or complaints, (pleas of frank-tenements, and felonies, and appeals only excepted); and this he is ready to verify: Wherefore he prays judgment, if he ought to be compelled to answer the said *D.* to the said plea here in court, &c.

G. Hill.

Bar.

Bar.

Hill. 17 Geo. 3.

AND the said *E.* by *W. D.* her attorney cometh and defendeth the wrong and injury, when, &c. and saith, that the said *J. P.* ought not to have or maintain his action aforesaid against her. *Because* she saith that she hath fully administered all the goods and chattels which were the said *S. W.*'s at the time of his death in her hands to be administered, nor had she any at the time of issuing the original writ of the said *J.* nor at any time since; and this the said *E.* is ready to verify: Wherefore she prayeth judgment, if the said *J. P.* ought to have or maintain his said action against her. And the said *E.* for a further plea in this behalf, by leave of the court here for this purpose first had and obtained by force of the statute in such cases made and provided, further saith, that the said *J. P.* ought not to have or maintain his said action against her, because she saith, that by a certain Indenture made at *B.* aforesaid, in the life-time of the said *S. to wit*, upon the 19th day of *November* in the year of our Lord 1776, between the said *S.* by the name of *S. W.* of *W.* in the county of *N.* gent. of the first part, the said *E.* by the name of *E. O.* of *Meers Ashby* in the said county of *N.* widow, of the second part, and *R. H.* (who is since dead) and *T. G.* of the third part, relating, that whereas a marriage was then shortly to be had and solemnized between the said *S.* and the said *E.* and that the said *E.* being then possessed of several goods, chattels and monies of a considerable value, and being desirous of securing the sum of 300*l.* of good and lawful money of *Great Britain*, to be disposed of according to her last will and testament, writing or otherwise, it was by the said indenture declared and agreed by and between all the said parties to the said indenture, that the said sum of 300*l.* should, after the said indented marriage should take effect, be raised in a convenient time out of the goods and chattels of the said *S.* or the said *E.* and should be ordered and disposed of, and be employed to such person or persons, and to and for such use and uses, intents and purposes, as was thereafter mentioned and declared; (that is to say) that the said sum of 300*l.* as soon as raised, should be put out at interest, by the approbation of the said *S.* and the said *E.* during

Plea by an executrix.

Plene administravit generally.

And a judgment recovered against her in an action of covenant.

The indenture.

during the joint lives of the said *S.* and *E.* and that whensoever the said monies or any part thereof should be paid in, the said monies so paid should be put out again at interest upon such securities as the said *S.* and the said *E.* should approve of, and that the securities to be taken for the same should be made and taken in the names of the said *R.* and *T. G.* in trust for the said *E.* And it was thereby further declared and agreed by and between the said parties to the said indenture, and the said *E.* did thereby declare and agree, that it should and might be lawful to and for the said *S.* to have and receive the interest of the said sum of 300*l.* for the better livelihood and maintenance of the said *S.* and *E.* and their family; and the said *S.* did by the said indenture for himself, his heirs, executors and administrators, covenant, grant and agree to and with the said *R.* and *T. G.* their executors and administrators, and to and with every of them, that the said sum of 300*l.* and every part thereof, should and might from time to time, and at all times after the death of the said *E.* be paid unto, had, taken and received by such person or persons to whom the said *E.* should at any time or times during her lifetime limit, give, devise, order, appoint or dispose of the same, or any part or parts thereof, either by her last will and testament in writing, or by any other writing purporting to be her last will and testament, or otherwise; And it was by the said indenture further agreed and declared, that if it should happen that the said *E.* should survive the said *S.* her intended husband, that then and in such case, from and immediately after the death of the said *S.* the said sum of 300*l.* and every part thereof, should be accounted the proper monies and estate of the said *E.* and should and might be received and taken by her the said *E.* her executors and administrators, and should and might be employed and disposed of to such person and persons, and to and for such use and uses, intents and purposes, and in such manner and form as she the said *E.* should at any time or times then following during her life think good to limit, appoint, order, give, devise or dispose of the same, or any part or parts thereof, as by the said indenture more fully appeareth. And the said *E.* further saith, that afterwards, *to wit*, on the 1st day of *December* in the year last above mentioned, at *B.* aforesaid, the said marriage was had and solemnised between the said *S.* and the said *E.* and although the said *S.* afterwards, *to wit*, on the same day and year, at *B.* aforesaid, possessed himself of divers goods, chattels, and monies of a considerable value. *to*

Breach.

with, of the value of 300l. which said goods, chattels and monies, at the time of his said intermarriage with the said *E.* were the proper goods, chattels and monies of the said *E.* yet the said *E.* saith, that notwithstanding the said marriage took effect as aforesaid, and the said *S.* had possessed himself of the said several goods, chattels and monies as aforesaid, yet the said sum of 300l. or any part thereof, hath not hitherto been raised out of the goods and chattels of the said *S.* nor of the said *E.* nor otherwise raised and put out according to the form and effect of the said agreement above mentioned and contained in the said indenture in that respect. And thereupon, the same indenture remaining in full force and virtue not released, and the said 300l. or any part thereof, not paid, satisfied or discharged, and the said *T. G.* having survived the said *R.* he the said *T.* in *Hil.* term in the 16th year of the reign of his present majesty, in the court of our said lord the king of the bench here, to wit, at *W.* in the county of *M.* impleaded the said *E.* by the name of *E. W.* late of *W.* in the said county of *N.* widow and executrix of the last will and testament of *S. W.* gent. her late husband, deceased, otherwise lately called *S. W.* of *W.* in the county of *N.* gent. in a plea, that she keep with the said *T.* the covenant made between the said *S.* and the said *R. H.* deceased, and the said *T.* according to the force, form and effect of the indenture aforesaid made between them and the said *E.* And thereupon such proceedings were had in the same court, that the said *T.* in the said *Hil.* term in the 16th year aforesaid, before Sir *J. W.* knr. and his companions justices of our said lord the king, of the bench aforesaid, at *W.* aforesaid, by judgment of the said court recovered against the said *E.* as executrix as aforesaid, 300l. which were adjudged to the said *T.* by the said court here for his damages which he had sustained by occasion of the said breach of covenant in that behalf to be levied of the goods and chattels which were the goods and chattels of the said *S.* at the time of his death, in the hands of the said *E.* unadministered, whereof she is convicted, as by the record and proceedings thereof now remaining in the said court of our said lord the king of the bench here, to wit, at *W.* aforesaid, more fully appeareth; which said judgment still remaineth in its full force, strength and virtue, not reversed nor vacated, nor any wise satisfied. And the said *E.* further saith, that she hath fully administered all the goods and chattels which were the said *S.*'s at the time of his death in her hands to be administered, except goods and chattels to the value of

Action brought thereupon against defendant.

And judgment recovered.

Plene administravit præter.

of 5l. and that she hath not, nor had at the time of suing out of the original writ of the said *J.* nor hath ever since had any goods and chattels which were the said *S.*'s at the time of his death in her hands to be administered, except the said goods and chattels to the value of the said 5l. which are not sufficient to satisfy the said debt due on the said judgment as aforesaid, and which are subject and liable towards satisfaction thereof; and this the said *E.* is ready to verify: Wherefore she prayeth judgment, if the said *J.* ought to have or maintain his said action against her, &c.

Wm. Whitaker.

And the said *S.* by *G. B.* his attorney * cometh and defendeth the force and injury when, &c. and saith that the said *C.* ought not to have or maintain his aforesaid action against him, because he saith that the said original writ of the said *C.* was sued out on the 23d of April in the 8th year of the reign, &c. and not before; and that he the said *S.* at any time within six years next before the day of suing out the said original bill, did not undertake in manner and form as the said *C.* above hath declared against him; and this he is ready to verify: Whereupon he prayeth judgment, if the said *C.* ought to have or maintain his aforesaid action thereupon against him, &c.

Plea, Non
assumpsit.
Non assumpsit
infra sex annos,
that defendant
was a bank-
rupt, and plain-
tiff's cause of
action accrued
before defendant
became a bank-
rupt.

And the said *D.* by *T. B.* his attorney cometh and defendeth the force and injury when, &c. and saith, that he did not assume upon himself in manner and form as the said *G.* above complaineth against him; and of this he putteth himself on the country. And the said *G.* likewise, &c. And the said *D.* by leave of this court, according to the form of the statute in that case lately made and provided, further saith, that the said *G.* ought not to have his said action against him the said *D.* because he saith that he the said *D.* did not assume upon himself in manner and form as the said *G.* above complaineth against him, at any time within six years next before the day of obtaining the said original writ of the said *G.* And this he is ready to verify: Wherefore he prayeth judgment, if the said *G.* ought to have his said action against him the said *D.* And the said *D.* by leave of this court, according to the form of the said statute in that case lately made and provided, further saith,

that

* Plea *Non assumpsit infra sex annos.* Lord chief justice Holt said, that the statute of limitations was one of the best statutes, and that the pleading thereof was no disparagement to any body. 7 Mod. 12

that the said G. ought not to have his said action against the said D. because he saith, that he the said D. since the fourteenth day of May in the year of our Lord 1729, mentioned in a certain act made in the parliament of his late majesty king George II. held by prorogation on the — day of — in the year of our Lord 17

intituled, *An act for the better preventing frauds committed by bankrupts*, and during the continuance of the said act, to wit, on the — day of — in the year of our Lord — at W. aforesaid, became a bankrupt, within the intention and meaning of the several statutes made and in force against bankrupts: And the said D. further saith, that the cause of the aforesaid action in the declaration aforesaid above specified, did accrue to the said G. before the time in which he the said D. did as aforesaid become bankrupt: And of this doth put himself upon the country: And the said G. likewise, &c.

And the said N. and J. by J. H. their attorney cometh and defendeth the force and injury when, &c. and say, that they did not undertake in manner and form as the said J. above complaineth against them: And of this they put themselves upon the country: And the said J. likewise, &c. And the said M. by H. H. his attorney cometh and defendeth the force and injury when, &c. and sayeth nothing in bar or preclusion of the aforesaid action of the aforesaid J. whereby the said J. remaineth undefended by the said M. by reason whereof the said J. ought to recover against the said M. his damages occasioned by the non-performance of his said promises and undertakings. But because it is not known whether or no the said N. and I. will be convicted of the premisses, and if they shall be convicted, it is convenient and necessary that there should be only one taxation of damages for the whole premisses in one writ specified, and those damages ought to be settled by the jury of the country in that behalf, let the writ of inquiry of damages aforesaid against the said M. be stayed until the said issue between the said J. and the said N. and J. shall be determined; Therefore, as well to try the issue between the said J. and the said N. and J. above joined, as also to inquire what damages the said J. hath sustained by occasion of the premisses aforesaid, the sheriff is commanded that he cause to come here twelve free and lawful men of the body of his county, &c. by whom, &c. and who are not related to the said N. I. or M. or to the said J. to recognize, &c. because as well, &c.

And the aforesaid J. by J. D. his attorney cometh and defendeth the force and injury when, &c. and saith that the

Plea non assumpsit by two defendants.

Issue.

Judgment by Nil dicit against a third defendant.

Unica taxatio.

Venire tam ad triand' quam ad inquir'.

Plea in case Sur assump. recovery in a former action.

the said *T.* ought not to have or maintain his said action against him, because he saith, that after the making the said several promises and assumptions in the said declaration mentioned, and before the day of obtaining the original writ of the said *T. to wit*, in the term of *St. Michael* in the present year of the reign of the now king, before Sir *W. D.* knt. and his companions justices of our said lord the king of the bench at *W.* by bill and without writ of the same king, and by the consideration of the said court, the said *T.* recovered against the said *J.* 60*l.* for his damages which he had sustained, as well by reason of the not performing the several promises and assumptions in the said declaration above mentioned, as for his costs and charges by him in his said suit in that behalf laid out and expended, as by the record and process thereof in the said court of our said lord the king of the bench at *W.* being and remaining fully appeareth; And the said *J.* averreth, that the promises and assumptions in the said record mentioned, and the promises and assumptions in the said declaration above mentioned, are the same promises and assumptions, and not other or different, and made for the same considerations, and not for other or different; and this the said *J.* is ready to justify: Whereupon he prayeth judgment, if the said *T.* ought to have or maintain his said action thereupon against him, &c.

Replication.
Nul tiel rec.

And the aforesaid *T.* saith, that by any thing alledged by the said *J.* in the above pleading, he ought not to be precluded from having his action aforesaid against the said *J.* because he saith that there is not any such record of the said recovery against the said *J.* at the suit of the said *T.* as he the said *J.* above in pleading hath alledged; And this he is ready to verify: Whereupon he prayeth judgment, and that his said damages may be adjudged to him, &c.

Rejoinder,
Quo habetur
tale recordum.

Day to bring in
the record.

Defendant de
fecit de recordo.

And the aforesaid *J.* saith, that there is such record of the said judgment, as the said *J.* above in pleading hath alledged: And this he is ready to verify by the said record, and prayeth that the said record may be seen and inspected by the justices here. And because the said record is not now to be had here in court, *It is commanded* the said *J.* that he have here the said record on _____ at his own peril, &c. The same day is given as well to the said *T.* as to the said *J.* here, &c. At which day come here as well the said *T.* as the said *J.* by their said attorneys; and the said *J.* hath not here the said record, but maketh default; whereby it sufficiently appeareth to the justices here, that there is not any such record of the said

said recovery as the said J. hath alledged: *Wherefore,*
&c.

And the said M. by J. B. his attorney cometh and defendeth the force and injury when, &c. and saith, that the said R. C. his action thereof against the said M. ought not to have, because he saith, that he the said R. heretofore, that is to say, in *Mich.* term in the 17th year of the reign of our now lord the king impleaded the said M. in his said majesty's court of Exchequer before the barons of the said Exchequer (the said court of Exchequer being at that time, and still is, at *W.* in the county of *M.*) in a certain plea of trespass upon the case upon promise for not performing the same promises and undertakings mentioned in the said declaration, and such proceedings were had thereupon in the said court of Exchequer, that the said R. C. afterwards, *to wit*, in the same *Mich.* term in the year aforesaid, by the consideration of the said court of Exchequer, recovered against the said M. 93l. which to the said R. C. in the said court of Exchequer were adjudged for his damages which he sustained, as well on occasion of not performing the same promises and undertakings as are mentioned in the above declaration, as for his costs and charges by him about his suit in that behalf laid out, whereof the said M. is convicted, as by the record and proceedings thereof (which our now lord the king, by virtue of his majesty's writ of error by the said M. prosecuted of and upon the premisses, hath lately caused to be brought in his said majesty's court of Exchequer chamber at *W.* there to be determined, and which still in the said court of Exchequer remains undetermined) more at large appeareth, which said judgment still remaineth in its full strength and effect, not in the least reversed, satisfied or annihilated; And this he is ready to verify by that record: Wherefore he prayeth judgment, if the said R. C. his said action therefore against him ought to have, &c.

Plea in case
Sur assump.
recovery in an-
other action.

In ejectment, upon the demise of J. B. the defendants pleaded Not guilty; and this plea was prepared at the assizes, but the plaintiff did not proceed, and the plea was not offered.

And the said T. B. and J. H. in their proper persons come and say, that the justices of our sovereign lady the queen here ought not to proceed to take the jury aforesaid between the said defendants and the said plaintiff, because they say, after the last continuance of the said plea, *to wit*, after from which

Plea, Puis
darrein cont.
in ejectment a
release from the
lessor of the
plaintiff.

the said plaint was last continued here, until this day,

to wit, on the 18th day of *July* last past, and before the same 18th day of *July*, *to wit*, on the 17th day of *July* last past, the said *J. B.* by the name of *J. B.* of *E. W.* in the parish of *E.* in the county of *York*, by his writing sealed with the seal of the said *J.* bearing date the same 17th day of *July* at — aforesaid, remised and released to the said *T.* and *J.* and their heirs, all his estate, right and title of and in the said messuages, lands and tenements in the said declaration mentioned, and also all and all manner of actions and causes of action whatsoever of and concerning the said premises, or any part thereof; And this they are ready to verify, &c. Wherefore they pray that the said justices will not proceed further to take the said jury, with this, that the said *T.* and *J.* will verify that the said *J. J.* is made and named plaintiff in the same action only to try the title of the said *J. B.* to the said tenements.

Plea, outlawry
in the plaintiff.

And the said *T.* by *F. K.* his attorney cometh and defendeth the force and injury when, &c. and saith, that the said *J.* ought not to have his aforesaid action against him the said *T.* thereon, because he saith that one *C. T.* heretofore (that is to say) in *Easter* term in the 5th year of the reign of his present majesty, by an original writ impleaded the said *J.* by the name of *J. H.* late of *London*, gent. in the court of the said now king, before the king himself (the said court then and still being at *W.* in the county of *M.*) in a plea of trespass; and the said *T.* because he did not appear in his said majesty's court before the king himself, to answer unto the said *C.* in the aforesaid plea, according to the law and customs of this realm, was put in exigent to be outlawed in *London*, and for that reason afterward, *to wit*, on *Monday* next before the feast of the purification of the blessed *Virgin Mary* in the 17th year of the reign of his present majesty, in the said court of our said lord the now king, before the king himself, was outlawed in due form of law at the suit of the said *C.* in the aforesaid plea, and still remaineth outlawed, as by the records and proceedings thereof in his said majesty's court, before the king himself at *W.* aforesaid, returned and now there remaining, may more fully appear; And this he is ready to verify by the said record; Wherefore he prayeth judgment, whether the said *J.* ought to have his said action therefore against him, &c.

Replication,
Nul tiel rec'.

And the said *J.* saith, that he by any thing by the said *T.* in his plea above alledged, ought not to be barred from his said action against him, because he saith that

that there is not any such record of outlawry in his said majesty's court, before the king himself, as the said *T.* by his said plea hath alledged; And this he is ready to verify in such manner as the court shall award. And the said *T.* is commanded that he have the record here on the morrow of the ascension of our lord at his peril; And the same day is given to the said *J.* here, &c. At which day here come as well the said *J.* as the said *T.* by their attornies aforesaid; and the said *T.* hath not here the said record, but maketh default thereof: Wherefore the said *J.* ought to recover, &c.

Day to bring in the record.

Defendant defecit de recordo.

And the said *G.* by *R. B.* his attorney cometh and defendeth the force and injury when, &c. and saith, that the said *J.* ought not to have his said action against him, because he saith that there is not, nor ever was any memorandum or note in writing of the said promise and undertaking above supposed to be made and signed by the said *G.* or any other person thereunto by him lawfully authorized, according to the form of the statute for preventing frauds and perjuries in such case lately made and provided; And this he is ready to verify: Wherefore he prayeth judgment, if the said *J.* ought to have his said action against him, &c.

Plea, the statute of frauds; no memorandum in writing.

And the said *W. T.* by *W. S.* his attorney cometh and defendeth the force and injury when, &c. and saith, that the said *J.* and *S.* ought not to have their said action against him, because he saith that the said *J.* and *S.* at the time of suing out the original of the said *J.* and *S.* were and now are indebted to the said *W. T.* in the sum of 50l. for meat, drink, washing, lodging, apparel, and other necessities found and provided by the said *W. T.* for the said *S.* while she was sole, at her special instance and request; and also in the further sum of 50l. for divers goods, wares and merchandizes sold and delivered by the said *W. T.* to the said *S.* while she was sole, at her like instance and request; and also, in the further sum of 50l. as well for money by the said *W. T.* to the said *S.* while she was sole, at her request lent and advanced, as for money to the use of the said *S.* while she was sole, at her like request expended; paid and laid out, and for money by the said *S.* while she was sole, of the said *W. T.* had and received; and also in the further sum of 50l. as well for divers work, labour, care and diligence of the said *W. T.* by himself, his servants and horses, for and at the like request of the said *S.* while she was sole, in and about her lawful business done and performed, as for depasturing, feeding and grazing certain cattle of the said *S.* while she was

Plea setting off a debt.

sole, at her like request depastured, fed and grazed by the said *W. T.* which said several sums of 50, 50, 50 and 50*l.* amount in the whole to the sum of 200*l.* and are still due and unpaid to the said *W. T.* And the said *W. T.* further saith, that he has been, and still is ready, and doth now offer (according to the form of the statute in this behalf made and provided) to set off against the money which in and by this suit shall appear to be due to the said *J.* and *S.* so much of the said 200*l.* so as aforesaid due to him the said *W. T.* as shall satisfy such money as appeareth to be due to the said *J.* and *S.* as aforesaid; And this he is ready to verify: Wherefore he prayeth judgment, if the said *J.* and *S.* ought to have their said action against him.

Tho. Walker.

Plea, setting
several sums
against plain-
tiff's demands.

And the said *J.* in his proper person cometh and defendeth the force and injury when, &c. and saith that the said *J.* ought not to have or maintain his said action against him, *because* he saith that the said *J.* on the day of suing out his said original writ against the said *J.* *to wit*, the 30th day of *May* in the year aforesaid, at *W.* aforesaid in the county aforesaid, was and yet is indebted unto the said *J.* in the sum of 105*l.* of lawful money of *G. B.* in the manner herein after mentioned; that is to say, the said *J.* on the 29th day of *May* in the year of our Lord 1776, at *W.* in the county aforesaid, made a certain promissory note in writing, and subscribed his name thereto, which said note beareth date the same day and year, whereby the said *J.* promised to pay to the said *J.* or order 144*l.* ten days after date thereof, for value received by the said *J.* of the said *J.* And the said *J.* averreth that he made no order for the payment of the said note on the said *J.* but acknowledged that the said *J.* hath paid him the sum of 110*l.* part of the said note, and the remaining 34*l.* other part, so due and payable from the said *J.* by the said note to the said *J.* still remaineth justly due and payable to him; And also the said *J.* afterwards, *to wit*, the 24th day of *July* in the year last mentioned, at *W.* aforesaid in the county aforesaid, made another promissory note in writing, and subscribed his name thereto, which said last mentioned note beareth date the same day, by which said last mentioned note the said *J.* in six weeks after date thereof promised to pay to the said *J.* or order, 40*l.* for value received by the said *J.* of the said *J.* and the said *J.* averreth that the said sum of money mentioned in the said last mentioned note,

or

or any part thereof, hath not been paid to him; and that he the said *J.* hath not made any order for the payment thereof to any other person or persons whatsoever, but the same note still remaineth in his hands unpaid and unsatisfied; And also the said *J.* on the said 30th day of *May* in the year of our Lord 1777 at *W.* aforesaid, in the county aforesaid, was and yet is indebted to the said *J.* in the sum of 31l. of lawful money of *G. B.* as well for money before that time expended, laid out and paid, in the soliciting, prosecuting, carrying on and defending of several suits at law and in equity in his present majesty's courts of Exchequer-chamber, King's bench and Common bench at *W.* as for the said *J.*'s fees, care and diligence, in soliciting, prosecuting, carrying on and defending the same for the said *J.* by the said *J.* and at the special instance and request of the said *J.* as also for money lent and paid to the said *J.* by the said *J.* at the like special instance and request of the said *J.* Which said several sums of 34l. 40l. and 31l. so due and owing to the said *J.* from the said *J.* as aforesaid, amount in the whole to the sum of 105l. And the said *J.* is ready, and now offereth to set against the demands of the said *J.* so much thereof as is sufficient to satisfy his said demands in this action, according to the form of the statutes in that case lately made and provided; And this he is ready to verify: Wherefore he prayeth judgment, and that the said *J.* may be barred from having his said action against him, &c.

Wm. Davy.

Mich. 14 Geo. 3.

W. R. against R. B. Debt on a bond for 200l. dated 24 Nov. 10 Geo. 3.

AND now here at this day, *to wit*, on the octaves of *St. Hilary* in this same term, until which day the said *Richard* had licence to imparl, and then to answer, &c. comes as well the said *William* by his attorney aforesaid, as the said *Richard* by *Roger Altham* his attorney, and the said *Richard* defendeth the force and injury, when, &c. and prayeth oyer of the writing aforesaid; and it is read to him; he likewise prayeth oyer of the condition of the said writing; and it is read to him in these words, *to wit*, The condition of this obligation is such, that if the above bounden *Richard B.* his heirs, ex-

Imparlanee

Oyer prayed of the bond, and of the condition.

The condition.

Bar.

What due on
the bond,

That plaintiff
indebted to de-
fendant in a
large sum,

for wheat sold.

And for goods,
wares and mer-
chandizes sold
and delivered.

ecutors, administrators or assigns, shall and do well and truly pay, or cause to be paid unto the above named *William R.* his executors, administrators or assigns, the full sum of 100l. of good and lawful money of *Great Britain*, with lawful interest for the same, on or before the 24th day of *May* next, without fraud or further delay; then this obligation to be void, and of none effect, or else to remain in full force and virtue; which being read and heard, the said *Richard* saith, that the said *William* ought not to have or maintain his said action thereof against him; because he saith, that at the time of exhibiting the said bill of the said *William* against the said *Richard*, there was due to the said *William* upon and by virtue of the said writing obligatory, the whole principal sum of 100l. mentioned in the condition of said writing obligatory, and the sum of 19l. 12s. 5d. $\frac{1}{4}$ for the interest thereof, and no more, to wit, at *London* aforesaid, in the parish and ward aforesaid. And the said *Richard* further saith, that the said *William* at the time of his exhibiting the said bill against him the said *Richard*, and before, at *London* aforesaid in the parish and ward aforesaid, was and still is indebted to the said *Richard* in a larger sum of money than the monies due from the said *Richard* to the said *William*, upon the said writing obligatory by the condition thereof, to wit, in the sum of 148l. 15s. of lawful money of *Great Britain*, for 600 acres of standing wheat before then sold by the said *Richard* to the said *William*, and at the special instance and request of the said *William*; and in the further sum of 148l. 15s. of the like lawful money, for divers goods, wares and merchandizes before then sold and delivered by the said *Richard* to the said *William*, at the special instance and request of the said *William*; which said sums of 148l. 15s. and 148l. 15s. do amount together to the sum of 297l. 10s. of like lawful money; which sum of 297l. 10s. exceeds the said principal and interest so due on the said writing obligatory mentioned in the said declaration from the said *Richard* to the said *William*; and out of which sum of 297l. 10s. the said *Richard* is willing and hereby offereth to allow to the said *William*, all the principal and interest due to the said *William* on the said writing obligatory, according to the form of the statute in such case made and provided; And this he is ready to verify: Wherefore he prayeth judgment whether the said *William* ought to have or maintain his said action thereof against him, &c.

Joseph Sayer.

And

And the said *William* saith, that by reason of any thing by the aforesaid *Richard* in pleading above alledged, he ought not to be barred from having his said action against the said *Richard*, because he saith, that he the said *William* at the time of suing out his said writ against the said *Richard*, was not nor is indebted to the said *Richard* in the aforesaid several sums of money, or either of them, or any part thereof, in manner and form as the said *Richard* hath in pleading above alledged; And this he prayeth may be inquired of by the country, &c.

Replication is not indebted.

John Glyn.

And the said *J. M.* by *W. M.* her attorney, cometh and defendeth the wrong and injury, when, &c. and saith, that she did not undertake and promise in manner and form as the said *T. P.* above declareth against her; and of this she putteth herself upon the country, &c. And the said *Thomas* doth the like, &c. And the said *J.* by leave of the court here for this purpose first had and obtained, according to the form of the statute in such case made and provided, further saith, That the said *Thomas* ought not to have his said action against her, because she saith, that she did not promise or undertake in manner and form as the said *Thomas* hath above complained against her, at any time within six years next before the day of suing out the aforesaid writ of him the said *Thomas*; And this she is ready to verify: Wherefore she prayeth judgment if the said *Thomas* ought to have or maintain his aforesaid action against her, &c. And for further plea in this behalf the said *J.* by like leave of the court here for this purpose first had and obtained, according to the form of the statute in such case lately made and provided, saith, that the said *Thomas* ought not to have or maintain his aforesaid action against her, because she saith, that the said *J. P.* in his life-time, and at the time of his decease, was indebted to the said *J.* and the said *Thomas* as executor of the last will and testament of the said *J.* as aforesaid, at the time of exhibiting the bill aforesaid, was and still is indebted to the said *J.* in more money than is due or owing from her the said *J.* to the said *Thomas P.* as executor as aforesaid, upon or by reason of the several promises and undertakings in the said declaration mentioned; that is to say, in the sum of 400l. of lawful money of *Great Britain*, for so much money before that time lent and advanced by the said *J.* to the said *J.* in his life-time, at his request: And also in the further sum of 300l. of like lawful money, for so much money

Plea non assumpsit:

Issue.
Second plea non assumpsit infra sex annos.

Third plea of mutual debts owing from plaintiff's testator, and plaintiff as his executor, to defendant.

money before that time paid, laid out and expended by the said *J.* for the said *J.* in his life-time, at his request: And also in the further sum of 400*l.* of like lawful money, for so much money before that time had and received by the said *J.* in his life-time, for the use of the said *J.* And also in the further sum of 200*l.* for work and labour performed and done by the said *J.* and her servants, for the said *J. P.* in his life-time, at his special instance and request, that is to say, at *H.* aforesaid; which said several sums of money are still unpaid to the said *J.* and exceed the money due and owing from the said *J.* to the said *Thomas P.* as executor as aforesaid, upon or by reason of the said several promises and undertakings in the said declaration mentioned, *to wit*, at *H.* aforesaid; and the said *J.* is ready, and now offereth to set off so much of the said several sums so due and owing to the said *J.* as aforesaid, as is sufficient to satisfy the money or damages justly due or payable to the said *Thomas* as executor, as aforesaid, by reason of the said several promises in the said declaration mentioned; And this the said *J.* is ready to verify: And therefore prayeth judgment if the said *Thomas* ought to have or maintain his said action against her, &c.

J. R.

Replication
quod assumpsit
infra sex annos.

And the said *Thomas*, as to the said plea of the said *J.* by her secondly above pleaded in bar, saith, that notwithstanding any thing by the said *J.* in that plea above alledged, he ought not to be barred from having his said action against her, because he saith, that the said *J.* did promise and undertake in manner and form as the said *Thomas* hath above complained against her, within six years next before the day of suing out the said writ of the said *Thomas*, *to wit*, at *H.* aforesaid; And this he prayeth may be inquired of by the country: And the said *J.* doth the like.

Issue.

Replication
(protestando
that the testa-
tor was not in-
debted, &c.)
that plaintiff as
executor is not
indebted to de-
fendant in more
than is due
from her to
plaintiff as ex-
ecutor.

And the said *Thomas*, as to the said plea of the said *J.* by her lastly above pleaded in bar saith, that notwithstanding any thing by the said *J.* in that plea above alledged, he ought not to be barred from having and maintaining his said action against her, because protesting that the said *J. P.* in his life-time, and at the time of his death, was not indebted to the said *J.* in manner and form as the said *J.* hath in and by her said plea above alledged; Nevertheless for replication the said *Thomas* says, that he the said *Thomas*, as executor of the last will and testament of the said *J.* was not nor is indebted to the said *J.* in more money than is due and owing from her the said *J.* to the

the said *Thomas* as executor, as aforesaid, upon the said several promises and undertakings in the said declaration mentioned, as the said *J.* hath in and by her said plea in that behalf above alledged; And this he prayeth may be inquired of by the country; And the said *J.* doth the like, &c. Therefore as well to try this issue, as the said several other issues between the said parties above joined, &c.

Issue.
Venire
awarded.

And the aforesaid *S.* by *M. H.* his attorney cometh and defendeth the force and injury, when, &c. And prayeth oyer of the writing obligatory aforesaid; and it is read to him: He prayeth also oyer of the condition of the same writing obligatory; and it is read to him in these words, *to wit*, The condition, &c. Which being heard and read, the aforesaid *S.* saith, that he virtue of the writing obligatory aforesaid ought not to be charged with the debt aforesaid, because he saith, that after the 29th day of *September* in the year of our Lord 1714, *to wit*, on the aforesaid 17th day of *August* in the year of our Lord 1774, aforesaid, at *W.* aforesaid, it was corruptly agreed between the aforesaid *J.* and the said *S.* that the said *J.* should lend to the said *S.* the sum of 20l. and should forbear and gave a day of payment thereof until the 12th day of *November* next ensuing; and that the said *S.* for the loan of the said 20l. and for the forbearance and giving a day of payment thereof for the time aforesaid, should give and pay to the said *J.* the sum of 20s. a month; and that the said *S.* should become bound to the said *J.* in a certain writing obligatory, as a security to the said *J.* for the payment of the said sum of 20l. according to the form and effect of the corrupt agreement aforesaid; and afterwards, *to wit*, on the aforesaid 17th day of *August* in the year of our Lord 1734, aforesaid, at *W.* aforesaid, the aforesaid *J.* in prosecution of the corrupt agreement aforesaid, did lend to the aforesaid *S.* the aforesaid sum of 20l. and the aforesaid writing obligatory, in the declaration aforesaid above mentioned, was thereupon then and there by the said *S.* sealed and delivered to the said *J.* as the deed of the said *S.* as a security for the payment of the said sum of 20l. so lent according to the form and effect of the corrupt agreement aforesaid, and the said *S.* in performance and according to the form and effect of the aforesaid corrupt agreement, afterwards, *to wit*, on the 15th day of *November* in the year of our Lord 1774, aforesaid, at *W.* aforesaid, paid to the said *J.* the sum of 20s. a month for the loan and forbearance of the aforesaid 20l. until the aforesaid 12th day of *November*; and the said *J.* then

Plea in debt on
a bond.
Oyer.

The statute of
usury.

and

and there took and accepted of the said *S.* the said sum of 20s. a month for the loan and forbearance of the aforesaid 20l. until the said 12th day of *November*, which said 20s. a month for the loan and forbearance of the said 20l. for the said time, exceedeth the rate of 5l. for the forbearance of 100l. for a year, contrary to the form of the statute in such case made and provided, whereby the writing obligatory in the declaration aforesaid above-mentioned, by force and virtue of the above statute in such case made and provided, is void in law; And this he is ready to verify: Wherefore he prayeth judgment, if the said *S.* by virtue of the writing obligatory aforesaid, ought to be charged with the debt aforesaid, &c.

Replication.
Lil. Ent. 184.

And the said *J.* saith, that he by any thing before alledged ought not to be barred from having his said action against the said *S.* because he saith that it was not corruptly agreed between the aforesaid *J.* and the said *S.* in manner and form as the said *S.* hath above in pleading alledged: And this he prayeth may be inquired of by the country, &c. And the said *S.* doth the like. Therefore, &c.

Plea in debt on
a bond, that the
obligor was non
compos mentis.

And the said *A. D.* by *P. L.* her attorney cometh and defendeth the force and injury, when, &c. and saith that she ought not to be charged with the said debt by virtue of the writing aforesaid, because she saith, that the said *E. D.* at the time of the sealing and delivering the said writing mentioned in the said declaration, was not of sound mind, but was *non compos mentis*; And this she is ready to verify: Wherefore she prayeth judgment, if she ought to be charged with the said debt by virtue of the writing aforesaid, &c.

Replication.

And the said *F. N.* saith that he, by any thing before alledged by the said *A. D.* in pleading, ought not to be precluded from having or maintaining his aforesaid action thereupon against her the said *A. D.* because he saith that the said *E. D.* at the time of the sealing and delivering of the said writing mentioned in the said declaration, was of sound mind, and was *compos mentis*, to wit, on the ——— day of ———, in the year of our Lord 1777, aforesaid, in the county aforesaid: and this he prayeth may be inquired of by the country; And the said *A.* likewise. Therefore, &c.

Plea by an heir,
in debt on a
bond, no lands
descended.

And the said *W. H.* by *C. S.* his attorney cometh and defendeth the force and injury, when, &c. and saith, that he as son and heir of the said *G.* his father, by virtue of the said writing ought not to be charged with the said debt, because he saith that he the said *W.* on or before the day of suing out the original writ of the said *T.* had not any lands or tenements by hereditary descent

from

from the said G. his father in the fee-simple ; And this he is ready to verify : Wherefore he prayeth judgment, if he as son and heir of the said G. his father, by virtue of the said writing ought to be charged with the said debt, &c.

And the said T. H. saith, that he by any thing in the said plea alledged ought not to be barred from having his said action against the said W. because he saith that the said W. on or before the day of suing out the said original writ of the said T. had several lands and tenements by hereditary descent from the said G. his father in fee-simple, *to wit*, in the county of *Lincoln*, aforesaid ; And this he prayeth may be inquired of by the country : And the said W. like wise.

Replication.

And the said E. by G. N. his attorney cometh and defendeth the force and injury, when, &c. and saith that the said T. ought not to have his aforesaid action against him, because he saith that he the said E. is not devisee of the said G. of any lands or tenements of the said G. whereof the said G. at the time of his decease was seised in fee-simple in possession, reversion or remainder, or had power to dispose of the same by his last will or testament ; And this he is ready to verify : Whereupon he prayeth judgment, if the said T. ought to have his aforesaid action against him, &c.

Plea, in debt on a bond, defendant is not devisee.

And the said T. H. as to the aforesaid plea of the said E. H. by him above pleaded in bar, saith, that he by any thing herein alledged ought not to be barred from having his said action against the said E. because he saith that he the said E. is devisee of the said G. of several lands and tenements of the said G. whereof the said G. was seised in fee-simple, *to wit*, in the county of *L.* aforesaid : And this he prayeth may be inquired, &c.

Replication.

And the said J. M. by ——— his attorney cometh and defendeth the force and injury, when, &c. and saith that the said J. R. ought not to have or maintain his said action thereupon against him, because he saith that he ought not to be charged with the said debt by virtue of the said writing obligatory, because he saith that he the said J. M. on the 27th day of *May* in the 12th year of the reign of our late sovereign lord *William III.* late king of *England*, &c. at *London* aforesaid, in the parish of *St. Mary le Bow* in the ward of *Cheap*, made and sealed the said writing, and then and there delivered it to one *E. B.* as an escrow, to be safely kept, upon the condition following, *to wit*, that if the said J. R. upon the 20th day of *June* in the year aforesaid, at *London* aforesaid, in the parish and ward aforesaid, should deliver to one *S. B.*

Plea, bond delivered as an escrow, upon condition.

Lil. Ent. 186.

1 Inst. 303.

9 Co. 137.

1 Salk 274.

Pract. Reg.

317, 340.

one

Condition not
performed.

Et sic non est
factum.

Demurrer.

Causes of de-
murrer.

Finder.

one hundred yards of woollen cloth called kerseys, and two hundred yards of linen cloth in good and merchandizable condition, to be exported by the said *S.* in the ship called the *Fisher*, to *Virginia* in parts beyond the seas, that then the said *J. M.* should deliver the said writing obligatory to the said *J. R.* as the deed of the said *J. M.* otherwise not. And the said *J. M.* saith, that the said *J. R.* upon the 20th day of *June* in the year aforesaid, did not deliver to the said *S.* the said hundred yards of woollen cloth, or two hundred yards of linen cloth; And so the said *J. M.* saith, that the said writing obligatory brought here into court, by the said *J. M.* delivered in form aforesaid, the said condition not being performed, is not his deed; And this he is ready to verify: Wherefore he prayeth judgment, if the said *J. R.* ought to have or maintain his said action thereupon against him, &c.

And the said *J. R.* saith, that he, by any thing by the said *J. M.* above in pleading alledged, ought not to be precluded from having his said action thereupon against the said *J. M.* because he saith that the said plea above pleaded by the said *J. M.* in manner and form aforesaid, and the matter therein contained, are not sufficient in law to preclude the said *J. R.* from having his said action thereupon against the said *J. M.* to which said plea he the said *J. R.* has no need, and is not bound by the law of the land in any matter to answer; And this he is ready to verify: Wherefore, for default of a sufficient answer in this behalf, he the said *J. R.* prayeth judgment, and his said debt, together with his damages by occasion of the detaining that debt, to be adjudged to him. And for causes of demurring in law in this behalf, the said *J. R.* according to the form of the statute in such case lately made and provided, sheweth and demonstrateth to the court here, that the said *J. M.* doth not conclude his said plea to the contrary as he ought, and that the said plea is not issuable, and wanteth form, &c.

John Broderick.

And the said *J. M.* saith, that the said plea by him the said *J. M.* above pleaded in manner and form aforesaid, and the matter therein contained, are good and sufficient in law to preclude the said *J. R.* from having his said action thereupon against him the said *J. M.* which said plea, and the matter therein contained, he the said *J. M.* is ready to verify and prove as the court, &c. And because the said *J. R.* doth not answer to the said plea, and hath not hitherto in any manner denied the same, he the

said
J. R.
upon
court
advi
pre
com
after
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now
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fend
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saïd J. M. as before prayeth judgment, and that the saïd J. R. may be barred from having his saïd action thereupon against him the saïd J. M. &c. But because the court of our saïd lady the queen now here is not yet advised about giving judgment of and concerning the premisses, day is therefore given to the saïd parties to come before our lady the queen at W. until ——— next after ———, to hear judgment of and upon the same premisses, for that the court of our saïd lady the queen now here is not yet advised thereof.

Continuance.

And the saïd J. by G. L. his attorney cometh and defendeth the force and injury, when, &c. and saith that the saïd J. ought not to have or maintain his saïd action thereupon against him, because as to the saïd 13l. in the saïd declaration first mentioned, parcel of the saïd 26l. and also as to 8l. 15s. and 9d. parcel of the saïd 13l. in the saïd declaration secondly mentioned, residue of the saïd 26l. the saïd J. saith that he doth not owe to the saïd J. S. the saïd 13l. or the saïd 8l. 15s. and 9d. or any part thereof; And of this the saïd J. putteth himself upon the country: And the saïd J. doth so likewise. And as to 4l. 4s. and 3d. residue of the saïd 13l. in the saïd declaration secondly mentioned (the saïd 13l. last specified being the saïd residue of the saïd 26l. and being the saïd rent for the saïd demised premisses in the saïd declaration secondly specified) the saïd J. saith, that well and true it is, that the saïd 4l. 4s. and 3d. of the saïd rent upon the saïd demise in the saïd declaration secondly mentioned, at the birth of our Lord Christ in the year of our Lord 1701, aforesaid, were in arrear, and still are in arrear; but the saïd J. further saith, that he the saïd J. upon the saïd feast of the birth of our Lord Christ in the year of our Lord 1701, aforesaid, by the space of half an hour next before and until the setting of the sun of the same feast, was ready at the saïd other house in the saïd declaration mentioned, and then and there offered to pay to the saïd J. the saïd 4l. 4s. and 3d. which he ought to have paid there to the saïd J. at the saïd feast, according to the form and effect of the saïd covenant in that behalf mentioned in the saïd declaration; and that the saïd J. or any other lawfully authorized on the behalf of the saïd J. was not then and there ready to receive of the saïd J. the saïd 4l. 4s. and 3d. and that the saïd J. on the saïd feast-day, and at all times after the saïd feast of the birth of our Lord Christ in the saïd year of our Lord, hitherto was ready, and still is ready to pay to the saïd J. the saïd 4l. 4s. and 3d. and he bringeth the same here into court, ready to pay the saïd J. if he the saïd J. is willing to receive

Bar in debt for rent, as to part, non debet, Lil. Ent. 164. Pr. Reg. 562.

Issue.

As to the residue, a tender. 5 Co. 114. 2 Salk. 622, 624. Lilly's Entr. 476.

ceive the same; All and singular which things the said *J.* is ready to verify, &c. Wherefore he prayeth judgment, if the said *J.* ought to proceed for damages against the said *J.*

R. Acherley.

Plea in debt on
an arbitration
bond.
Oyer.

No award
made.

And the said *J.* by *R. S.* her attorney cometh and defendeth the force and injury when, &c. and prayeth oyer of the said bond; and it is read to her, &c. she also prayeth oyer of the condition of the said bond; and it is read to her in these words, *to wit*, The condition, &c. which being read and heard, the said *J.* saith that the said *J. A.* ought not to have his said action against her, because she saith that the said arbitrators in the said condition of the said bond named, did not make any award of or upon the premisses in writing indented under their hands and seals, ready to be delivered to the said parties on or before the 29th day of *October* next ensuing the date of the said bond; neither did the said arbitrators chuse any umpire for the ending and composing the differences aforesaid within the time in the condition of the said bond limited in that respect; And this she is ready to verify: Wherefore she prayeth judgment, if the said *J.* ought to have his said action against her, &c.

W. H. Ashurst.

Replication,
award set forth.

And the said *J.* saith, that he ought not, by reason of any thing above alledged by the said *J.* to be barred from having his said action against her, because he saith, that on the 29th day of *October* in the condition above mentioned, the said *J. W.* and *T. S.* the arbitrators named in the said condition, having taken upon them the burthen of the said award, and having fully examined and duly considered the proofs and allegations of both the said parties, for the settling amity and friendship between them, at the city of *Bath* aforesaid in the county aforesaid, made and published their award and order of and concerning the premisses specified in the aforesaid condition, in writing indented under their hands and seals, in manner and form following, (that is to say) That all actions, suits, quarrels, controversies and demands whatsoever had, moved, arisen, and depending between the said parties, for any manner of cause whatsoever, to the day of the date of the said award, should cease, and be no further prosecuted, and that each of the said parties should pay and bear his and her own costs and charges in any wise relating to or concerning the said premisses; And the said arbitrators in and by their said award did further award, order and finally determine, that the

said *J. S.* her heirs, executors or administrators, should pay to the said *J. A.* his executors or administrators, the full sum of 29l. of good and lawful money of *Great Britain*, without any deduction whatsoever, at one intire payment, on the 30th day of *January* then next ensuing, at eleven o'clock in the forenoon of the same day, in the church-porch of the parish of *W.* in the county of *S.* and lastly the said arbitrators, in and by their said award, did award, order and finally determine, that on payment of the said sum of 29l. the said *J. A.* and *J. S.* should in due form of law execute each to the other of them general releases, sufficient in the law for the releasing each to the other of them, his and her heirs, executors and administrators, all actions, suits, arrests, cause and causes of action and suit, quarrels, controversies and demands whatsoever, for, touching or concerning any matter, cause or thing whatsoever, from the beginning of the world until the said ——— day of ——— in the year of our Lord ——— aforesaid, as by the said award now produced here in court more fully appeareth; and the said *J. A.* in fact saith, that although he hath performed and fulfilled every thing specified in the aforesaid award on his part to be performed and fulfilled, nevertheless the said *J.* hath not paid to him the said *J.* the sum of 29l. on the said 30th day of *January* next after the date of the said award, which she ought to have paid to him on that day, according to the form and effect of the said award; And this he is ready to verify: Whereupon he prayeth judgment, and his debt, together with his damages by means of the detention of the said debt, to be adjudged unto him.

John Glyn.

And the said *J.* saith that the replication aforesaid of the said *J.* in manner and form aforesaid above made, and the matter therein contained, are insufficient in law for the said *J.* to have and maintain his said action against her, and that she the said *J.* is not necessitated or obliged by the law to make any answer to the said replication in manner and form aforesaid made; And this she is ready to verify: Wherefore, for want of a sufficient replication in this respect, she the said *J.* prayeth judgment, and that the said *J.* may be barred from having his said action against her, &c. Demurrer.

And the said *J.* for that he in his replication aforesaid hath alledged sufficient matter in law for him the said *J.* to have and maintain his said action against the said *J.* which matter he the said *J.* is ready to verify, and which matter Joinder.

Plea in trespass
and assault a-
gainst three.
Two plead
Not guilty.

The third, as
to part, pleads
Not guilty.

As to the resi-
due, that de-
fendant was
master of a
ship, and plain-
tiff opposed
and obstructed
him in the dis-
charge of his
duty.

matter the said J. hath not in any manner denied, nor answered the same, but refuseth to admit the proof thereof, the said J. as before prayeth judgment, and his debt aforesaid, together with his damages by means of detaining the same debt, to be adjudged to him, &c.

And the said J. S. G. and J. by T. C. their attorney come and defend the force and injury, when, &c. And the said G. and J. say that they are not guilty of the trespass and assault aforesaid, in manner and form as the said J. in his said declaration hath above complained against them; And of this they put themselves upon the country: And the said J. doth the same. And the said J. S. as to the coming with force and arms, or any thing which is against the peace of our present lord the king, and also as to the whole trespass aforesaid, except the said assault on the said J. beating and evilly treating him, saith that he is not guilty thereof, as the said J. above hath complained against him: And thereupon he putteth himself upon the country: And the said J. doth the same. And as to the said assault of the said J. and evilly treating of him, above supposed to be done, the said J. saith that the said J. ought not therefore to have his said action against him, because he saith that before the said time when, &c. and at the said time when, &c. and afterwards, he the said J. S. was master of a certain ship called the *Orford*, and had the conduct, direction and management of the said ship lawfully committed to him, at *London* aforesaid, in the parish and ward aforesaid; and that the said J. at the said time when, &c. at *London* aforesaid, in the parish and ward aforesaid, opposed the said J. and obstructed him in the discharge of his duty as master of the said ship, and so placed himself in the way of the said J. S. that the said J. could not discharge his duty aforesaid without the said J. was removed from the place where he then stood; and the said J. then and there so requested the said J. to remove himself, and to stand out of his way, so that the said J. might discharge his duty aforesaid, which the said J. did not do, but continued to obstruct the said J. and to stand in his way as aforesaid; whereupon, because the said J. would not remove himself and stand out of the way of the said J. at his request, but continued to obstruct him in the discharge of his said duty as aforesaid, he the said J. gently laid his hands on the said J. to cause him to remove and to stand out of his way, for the discharge of the duty of the said J. as master of the said ship as aforesaid; which are the same assault upon the said J. beating and evil treating of him, whereof the said J. hath above against him declared; and this he is ready to

verify:

verify: Wherefore the said J. S. prayeth judgment, if the said J. ought therefore to have his said action against him, &c.

And the said J. by L. M. his attorney cometh and defendeth the force and injury when, &c. And as to the coming with force and arms, &c. and also the whole trespass aforesaid, except the breaking and entering the said close, and treading down and consuming the said grass with his feet in walking and treading down and consuming other grass with his cattle, he saith that he is in nothing guilty thereof, as the said T. above complaineth against him; And of this he putteth himself upon the country: And the said T. doth so likewise. And as to the breaking and entering the said close, and treading down and consuming the grass with his feet in walking, and treading down and consuming other grass with his cattle, the said J. saith that the said T. ought not to have his said action thereupon against him, because he saith that the said close of the said T. at the said time in which, &c. lay, and still lieth in a certain common field in *Uxborn M.* aforesaid, called *Kirkfield*, lying contiguous to a certain common way there called a common balk, on the north part, and to a certain close in *Uxborn M.* aforesaid called *Flask-close*, on the south part of which said close called *Flask-close* one *A. B.* long before the time in which, &c. was seised in his demesne as of fee, and that the said *A. B.* and all those whose estate he had in the said close, from the time to the contrary whereof the memory of man is not, have had, used and enjoyed a certain way for themselves, their servants, farmers and tenants there, with their cattle, carts and carriages whatsoever, at all times of the year, at their pleasure, from the said common way in, by and thro' the said close in which, &c. to the said close called *Flask-close*, and so back again from the said close, in, by and through the said close in which, &c. into the said common way; and the said *A. B.* being so seised thereof, afterwards and before the said time in which, &c. at *Uxborn M.* aforesaid died, after whose death the said close called *Flask-close* descended to *W. B.* being then and still under the age of 14 years, as son and heir of the said *A. B.* upon which *Frances B.* widow, mother and guardian of the said *W. B.* entered into the said close called *Flask-close*, in the right and to the use of the said *W. B.* and afterwards and before the said time in which, &c. *to wit*, on the ——— day of, &c. at *Uxborn M.* aforesaid, the said *F.* demised the said close called *Flask-close* to the said J. To hold to the said J. and his assigns for the term one year thence

Bar in trespass.
Prescription for
a way through
the plaintiff's
close.

next

next ensuing, and so from year to year, so long as it should please both parties, by virtue of which demise the said J. entered into the said close called *Flask-close*, and was and still is possessed thereof; whereby the said J. on the 10th day of *May* in the 29th year aforesaid, and at divers days and times afterwards, and before the 1st day of *June* then next ensuing went from the said common way with his cattle, in, by and through the said close of the said T. to the said Close called *Flask-close*, and so returned back from the said close in, by and through the said close of the said T. into the common way aforesaid, using his said way, doing as little damage as he could in the said close of the said T. which said breaking the said close in which, &c. for the cause aforesaid, and treading down and consuming the said grass with his feet in walking, and with his said cattle in the said close in using the said way, is the same breaking and entering the said close in which, &c. and treading down and consuming the said grass whereof the said T. above complaineth against him; And this he is ready to verify. Wherefore he prayeth judgment, if the said T. ought to have his said action thereupon against him.

Plea, justification of an assault, the defendant being master of a sloop, and the plaintiff a sailor, and refusing to do his duty.

And the said G. L. by J. G. the younger his attorney cometh and defendeth the force and injury, when, &c. and as to the coming with force and arms, and also the whole trespass aforesaid, except the aforesaid assaulting and beating, saith that he is in nothing guilty thereof; And of this he putteth himself upon the country: And the said G. A. doth so likewise, &c. And as to the residue of the said trespass above supposed to be done, the said G. L. saith that the said G. A. ought not to have his said action thereupon against him, because he saith, that for the space of several months next before the time in which the said trespass is supposed to be done, and also at the said time in which, &c. the said G. L. was master, and the said G. A. one of the mariners of a certain ship called the *Union* frigate, which said ship at the time in which, &c. was upon the high sea (*to wit*, at the parish aforesaid) in her voyage which she was making to *Leghorn*, and other places in the *Mediterranean* sea, and from thence back to *London*; and that the said G. A. at the said time in which, &c. refusing to do his duty in and about the necessary navigating and governing the said ship in her said voyage, and despising the orders of the said G. L. in that behalf, and intending to sow and stir up sedition, tumults and mutiny amongst the other mariners of the said ship against the said G. L. being his master as aforesaid, the said G. L. that he might keep the said G. A. to his duty and obedience, moderately struck the said G. A. with

with his hand, as it was lawful for him to do, which is the same residue of the said trespasss whereof the said *G. A.* above complaineth; and this he is ready to verify: Wherefore the said *G. L.* prayeth judgment, if the said *G. A.* ought to have or maintain his said action thereupon against him, &c.

And the said *B.* by ——— his attorney cometh and defendeth the force and injury when, &c. and as to the coming with force and arms, or whatsoever that is against the peace of our lord the present king, as also the whole trespasss aforesaid, with the cattle aforesaid, except with one gelding and one mare of the cattle aforesaid, above supposed to be done, the said *B.* saith that he is not guilty thereof; And of this he putteth himself upon the country; And the said *A.* doth so likewise, &c. And as to the residue of the said trespasss, with the one gelding and one mare aforesaid above supposed to be done, the said *B.* saith that the said *A.* ought not to have his said action against him, because he saith that the said close, and also the place in which the said trespasss is above supposed to be done, are, and at the same time in which, &c. were 40 acres of land with the appurtenances in *D.* aforesaid, which said 40 acres of land with the appurtenances are, and at the same time in which, &c. and also from the time to the contrary whereof the memory of man is not, were parcel of a certain common field called *L.* in *D.* aforesaid. And the said *B.* further saith, that the borough of *D.* in the county of *D.* is an antient borough, and that he the said *B.* is, and at the said time in which, &c. and long before, was and still is one of the burgesses of that borough, and that the burgesses of that borough, from the time to the contrary whereof the memory of man is not, until the 11th day of *July* in the 14th year of the reign of the lord *Charles* the first, late king of *England*, &c. were a body politic and corporate by the name of the bailiffs and burgesses of the borough of *D.* and by that name used to implead and be impleaded. And the said *E.* further saith, that in and upon the said 11th day of *July* in the 14th year of the reign of the lord *Charles* I. late king of *England*, &c. the said lord king *Charles* I. by his letters patent made under his great seal of *England*, bearing date at *Westminster* the 11th day of *July* in the said 14th year of his reign, constituted and created the bailiffs and burgesses of the borough aforesaid to be from thenceforth for ever a body politic and corporate, by the name of mayor and burgesses of the borough of *D.* in the county of *D.* as by the said letters patent which the said *B.* bringeth here into court

Plea, bar in trespasss, as to part Not guilty.

As to residue, justifies for common by prescription, as a burgess of the borough of *D.*

Mellor v. Walker, entr. Hil. 21 & 22 Car. 2. ro. 1283.
1 Vent. 21, 92.
2 Saund. 4.
1 Sid. 462.
2 Keb. 658.
676, 858.

Letters patent.

Profert.

more fully appeareth. And the said *B.* further saith, that the said bailiffs and burgesles, from the time to the contrary whereof the memory of man is not, until the said 11th day of *July* in the said 14th year of the reign of the said lord *Charles I.* and the mayor and burgesles of the said borough, upon the said 11th day of *July* in the 14th year aforesaid, and continually afterwards hitherto, have had, and for the whole time aforesaid have been used to have, for themselves and every burges of the said borough, common of pasture in the said field called *L.* whereof, &c. for all their cattle commonable within the said borough of *D.* levant and couchant, to wit, in every two years coming together when the said field called *L.* whereof, &c. in which, &c. or any part thereof was sowed with any corn, after the said corn in the said field called *L.* whereof, &c. was mowed and carried away, until the said field or any part thereof was re-sowed with corn, and in every third year when the said field called *L.* whereof, &c. lay fresh and fallow, then for the whole year; *Whereby* the said *B.* on the first day of *August* in the 20th year of the reign of our lord the present king, which was the third year in which the said field called *L.* lay fresh and fallow, put his said gelding and mare which were the proper cattle of the said *B.* and levant and couchant within the said borough of *D.* into the said field called *L.* whereof, &c. to eat the grass growing in the same, in using his said common, and with his feet in walking for that cause, and with his said gelding and mare eat up, trod down and consumed the said grass then growing in the said close in which, &c. as it was lawful for him to do, which are the same residue of the said trespass whereof the said *H.* above complaineth against him; *Without this,* that he the said *B.* is guilty of any trespass in the said place in which, &c. with the said gelding and mare, at any time after the said field or any part thereof was in any year sowed with corn, and before the corn in the same year in the said field called *L.* was mowed and carried away; And this he is ready to verify: Wherefore he prayeth judgment if the said *H.* ought to have his said action against him, &c.

Plea in assault
by two defend-
ants, as to part
Not guilty.

Issue.

And the said *A. W.* and *G. W.* by *T. H.* their attorney come and defend the force and injury when, &c. And as to the coming with force and arms, and all the trespass aforesaid, except the assaulting, beating and wounding the said *J.* by them supposed to be committed, they say that they are in no wise guilty thereof; And of this they put themselves upon the country: And the said

J. H

J. H. likewise, &c. And as to the assaulting, beating and wounding the said *J.* above supposed to be committed by the said *A.* she the said *A.* saith that the said *J.* ought not to have or maintain his said action against her for the same, because she saith that the said *J.* upon the same day and year in the said declaration above mentioned, at *B.* aforesaid, with force and arms made an assault upon her the said *A.* and would then and there have beat, wounded and evil-treated her, for which cause she the said *A.* then and there defendeth herself against the said *J.* And the said *A.* saith, if any damage or ill then and there befel the said *J.* the same was from the proper assault of the said *J.* upon the said *A.* and in defence of the said *A.* And this she is ready to verify: Wherefore she prayeth judgment, if the said *J.* ought to have or maintain his said action against her for the same. And the said *G.* as to the assaulting, beating and wounding of the said *J.* above supposed to be committed by her, the *G.* saith that the said *J.* ought not to have or maintain his said action against her for the same, because she saith, that at the said time when the said trespass is above supposed to have been committed by the said *G.* they the said *A.* being the sister of the said *G.* and the said *J.* with force and arms, &c. were fighting together, and would have beat, wounded and evil treated each other at *B.* aforesaid; whereupon the said *G.* for preservation of the peace of his said majesty, and to prevent the said *A.* and *J.* from doing bodily hurt to each other, and in defence of her said sister, then and there interposed between them, and gently laid her hands on the said *J.* to part them the said *A.* and *J.* from further fighting one with another, and to prevent the said *J.* from doing bodily hurt to her said sister *A.* Upon which the said *J.* then and there with force and arms made an assault upon her the said *G.* and then and there would have beat, wounded and evil treated her; whereupon the said *G.* then and there defendeth herself against the said *J.* And the said *G.* saith, that if any damage or ill then and there befel the said *J.* the same was from the cause aforesaid, and from the assault of the said *J.* upon her the said *G.* and in defence of the said *G.* as aforesaid; And this she is ready to verify: Wherefore she prayeth judgment, if the said *J.* ought to have or maintain his said action against her for the same.

And the said *J.* as to the plea of the aforesaid *A.* as to the aforesaid assaulting, beating and wounding of him the said *J.* by her the said *A.* saith, that by reason of

D 2

any

As to the residue, one defendant pleads Son assault demesne.

The other a special Son assault, viz. The two defendants were sisters, the plaintiff and the first defendant were fighting, the second defendant to preserve the peace, and in defending her sister, molliter manus imposuit: whereupon plaintiff assaulted her, et sic, &c.

Replication to the plea of the first defendant, de injuria sua propria.

Issue.
To the plea of
the second de-
fendant, de
injuria sua pro-
pria.

Issue, and Ve-
nire awarded.

Assault.

Plea, Not guil-
ty by one de-
fendant.
Issue.

Not guilty, as
to part, by the
other defend-
ant.

Issue.

As to the resi-
due, plaintiff
entered into the
defendant's
dwelling house
and disturbed
him in the pos-
session of it,
and defendant
molliter manus
imposuit.

any thing by the said *A.* in her plea aforesaid alledged, he ought not to be barred from having his action aforesaid against her for the same, because he saith that she the said *A.* of her own wrong, and without the cause by her in her plea aforesaid alledged, the day and year aforesaid, at *B.* aforesaid, did assault, beat and wound him the said *J.* in manner and form as the said *J.* above complaineth against her; And this he prayeth may be inquired of by the country: And the said *A.* likewise, &c. And the said *J.* as to the plea aforesaid of her the said *G.* as to the said assaulting, beating and wounding of him the said *J.* by her the said *G.* saith, that by reason of any thing by her the said *G.* in her plea aforesaid alledged, he ought not to be barred from having his said action against her for the same, because he saith that she the said *G.* of her own wrong, and without the cause by her in her plea aforesaid alledged, *to wit*, the day and year aforesaid, at *B.* aforesaid did assault, beat and wound the said *J.* in manner and form as he the said *J.* above complaineth against her; And this he likewise prayeth may be inquired of by the country; And the said *G.* likewise, &c. Therefore, as well to try that issue, as the several other issues above joined between the said parties, the sheriff, &c.

And the said *N.* and *J.* by *H. B.* their attorney come and defend the force and injury when, &c. And the said *J.* saith that he is in no wise guilty of the trespass aforesaid, as the said *J.* above complaineth against him; And of this he putteth himself upon the country: And the said *J.* doth the like. And the said *N.* as to the coming with force and arms, and as to the wounding of the said *J.* and the tearing of her clothes aforesaid above supposed to be committed, saith, that he is in no wise guilty thereof, as the said *J.* above complaineth thereof against him; And of this he putteth himself upon the country: And the said *J.* doth the like. And as to the residue of the trespass aforesaid above supposed to be committed, the said *N.* saith that the said *J.* ought not to have her aforesaid action against him, because he saith, that at the aforesaid time when it is supposed the aforesaid trespass was committed, he was lawfully possessed of a certain messuage, being his dwelling-house in *P.* in the county aforesaid; and he the said *N.* being so possessed of the said messuage aforesaid, the said *J.* without the leave of him the said *N.* did enter into the aforesaid house, and did tarry there and greatly disturb him in the possession thereof; whereupon the said *N.* then and there requested the said *J.* to depart
out

out of the aforesaid house of him the said *N.* which she then and there wholly refused to do; wherefore the said *N.* to cause the said *J.* to depart from thence, did gently lay his hands upon the said *J.* in the said house to put her out of the said house, and did put her out of the house aforesaid, which are the aforesaid residue of the trespasses aforesaid whereof the said *J.* above complaineth; *Without this*, that the said *N.* is guilty of the aforesaid residue of the trespasses aforesaid, at *B.* aforesaid, or elsewhere than at *P.* aforesaid; and this the said *N.* is ready to verify: Wherefore he prayeth judgment, if the said *J.* ought to have her aforesaid action against him for the same.

Traverse the place.

Replication, *de injuria sua propria.*

And the said *A.* by *S. F.* his attorney cometh and defendeth the force and injury, when, &c. And as to the coming with force and arms, and all the said several trespasses supposed to be done, except the said assault, imprisoning, and detaining and keeping in prison of the said *C.* for the time in the declaration aforesaid first above mentioned, supposed to be done, he saith that he is not guilty thereof as the said *C.* above complaineth against him; And of this he putteth himself upon the country, &c. And the said *C.* doth the like, &c. And as to the said assault, evilly treating, imprisoning, and detaining and keeping in prison of the said *C.* in the declaration aforesaid first above mentioned supposed to be done, the said *A.* saith that the said *C.* ought not to have his action aforesaid against him for the same, because he saith, that long before the time aforesaid in which, &c. and at the same time in which, &c. and continually afterwards hitherto, he the said *A.* was and is keeper of the common goal of our sovereign lord the king of his county of *Y.* aforesaid, at the castle of *Y.* aforesaid in the said county; And that long before the said time in which, &c. *to wit*, in the term of St. Hilary in the 11th year of the reign of the lord the now king, a certain writ of *Ca. ad respond.* directed to the then sheriff of the county of *Y.* aforesaid, did issue out of the court of our said lord the king of the bench then being at *W.* in the county of *M.* by which said writ our said sovereign lord the king commanded the said then sheriff that he should take the said *C. D.* and him safely keep, so that he might have his body before the justices of our said lord the king at *W.* aforesaid, from the day of *Easter* in fifteen days to answer *E. F.* in a plea of trespass,

Plea in assault and imprisonment.
As to part, not guilty.

Issue.
As to the residue.

Defendant is keeper of the county goal of York.

Ca. ad respondendum issued against plaintiff.

Writ delivered
to the sheriff.

Plaintiff arrest-
ed thereon.

Plaintiff com-
mitted to the
custody of the
defendant.

Traverse.

pass, and also in a certain plea of trespass on the case, upon promise, to the damage of the said *E.* 30*l.* Which said writ afterwards, and before the return thereof, *to wit*, on the 12th day of *March* in the year last above mentioned, at the castle of *Y.* aforesaid, was delivered to *G. H.* esq; then sheriff of *Y.* in due form of law to be executed. By virtue of which said writ the said *G. H.* then being sheriff of the said county, afterwards, and before the return of the said writ, that is to say, the said 12th day of *March* in the said year last above mentioned, at the castle of *Y.* aforesaid, the said *C. D.* in due form of law arrested and took into his custody; And the said *C. D.* being then in custody of the said sheriff upon the arrest aforesaid, he the said *G. H.* being then sheriff of the county aforesaid, afterwards and before the return of the said writ, *to wit*, the said 12th day of *March* in the year last above mentioned, at the castle of *Y.* aforesaid, by his certain warrant under the seal of his office of sheriff of the county of *Y.* aforesaid sealed, and to the said *A.* then keeper of the goal aforesaid directed, commanded that he the said *A.* should take into his custody the body of the said *C. D.* and him safely keep, so that the said sheriff might have his body before the said justices of our said lord the king at *W.* from the said day of *Easter* in fifteen days to answer the said *F.* of the said plea of trespass on the case, upon promise, to the damage of the said *E.* 30*l.* By virtue of which said warrant the said *A.* afterwards and before the return of the said writ, *to wit*, the same 12th day of *March* aforesaid, in the year last above mentioned, the said *A.* being then keeper of the said goal, the said goal being then at the castle of *Y.* aforesaid, did gently lay his hands upon the said *C.* to take him into his custody in the goal aforesaid for the cause aforesaid, and him the said *C.* then and there for the cause aforesaid did take into his custody in the goal aforesaid, by virtue of the said warrant, and according to the duty of his said office did detain for the time in the declaration aforesaid mentioned, that is to say, until such time as he the said *C.* by due course of law was out of the custody of him the said *A.* as gaoler as aforesaid delivered, as it was lawful for him to do, which are the assault, evil treating, imprisoning, and detaining and keeping in prison of the said *C.* by the time aforesaid in the said declaration first above mentioned supposed to be done, whereof the said *C.* above complaineth against him; *Without* this, that the said *A.* is guilty of the said trespass, assault, imprisoning, and detaining and keep-
ing

ing in prison of the said C. at any time before the taking and receiving of the said C. into the goal aforesaid, for the cause aforesaid, or at any time after his said discharge out of the said goal as aforesaid; and this he is ready to verify: Wherefore he prayeth judgment, if the said C. ought to have or maintain his action aforesaid against him, &c.

And the said C. as to the said plea of the said A. above pleaded in bar, as to the said assault, evil treating, imprisoning, and detaining and keeping in prison of the said C. above done, saith, that he by any thing before alledged ought not to be barred from having his said action for the same against him, because he saith that he the said A. is guilty of the said trespass, assault, imprisoning, and detaining and keeping in prison of the said C. after his said discharge out of the said goal in the said plea mentioned, in manner and form as the said C. hath above declared against him; And this he prayeth may be inquired of by the country: And the said A. doth the like. Therefore, &c.

Replication,
defendant is
guilty after
plaintiff was
discharged.

And the said T. R. by J. G. his attorney cometh and defendeth the force and injury, when, &c. and saith that the said T. G. ought not to have his said action against him, because he saith that the said T. G. at the respective times of speaking of the said respective words so spoken by the said T. R. of the said T. G. as aforesaid, was a sodomite and a buggerer, *to wit*, at S. aforesaid; and therefore he the said T. R. spoke of the said T. G. the said several words above mentioned, as it was lawful for him; And this he is ready to verify: Wherefore he prayeth judgment, if the said T. G. ought to have his said action against him, &c.

Plca in case for
words justifies
the words.

And the said T. G. saith, that he by any thing by the said T. R. in pleading above alledged ought not to be precluded from having his action aforesaid against him, because he saith that the said T. R. of his own wrong, without such cause by the said T. R. above in pleading alledged, on the said 1st day of May in the year of our Lord 1777, at S. aforesaid, did say, affirm, declare and publish, of and concerning the said T. G. the said words in the said declaration first above specified, that is to say, You, &c. [as in the declaration] and also afterwards, *to wit*, on the same day and year at S. aforesaid, the said T. R. with a loud voice did speak, rehearse, proclaim, publish and declare of the said T. G. the other words in the said declaration last above specified, that is to say, You, &c. [as in the declaration] in manner and form

Replication, de
injuria sua pro-
pria.

form as the said *T. G.* hath thereof above declared; And this he prayeth may be inquired of by the country: And the said *T. R.* likewise: *Therefore, &c.*

Plea of bankruptcy.

AND the said *Robert H.* by *John F.* his attorney cometh and defendeth the wrong and injury, when, &c. and saith that the said *Gabriel G.* ought not to have his said action against him, because for a general plea in this behalf, according to the form of the statute in such case made and provided, he saith that he the said *Robert* after the first day of *June* in the year of our Lord one thousand seven hundred and seventy-seven, and before the exhibiting the said bill of the said *Gabriel*, (*to wit*) on the thirteenth day of *June* in the year of our Lord one thousand seven hundred and seventy-seven aforesaid, became a bankrupt within the intent and meaning of the several statutes made and in force concerning bankrupts, (*to wit*) at *London* aforesaid in the parish and ward aforesaid, and that the several causes of action aforesaid, and each and every of them did accrue before the time that he the said *Robert* became a bankrupt as aforesaid; And of this he putteth himself upon the *country: And the said *Gabriel* doth likewise the same. *Therefore, &c.*

Issue.

Hil. 17 Geo. 3.

Plea non assumpsit to the second and third promises.

AND the said *F. C.* by *G. B.* his attorney cometh and defendeth the force and injury when, &c. And as to the second and third promises and undertakings in the said declaration specified and above supposed to be made, the said *Francis* saith, that he did not undertake and promise in manner and form as the said *W. J.* thereupon above complaineth against him; And of this he putteth himself upon the country: And the said *W.* doth the like. And as to the first promise and undertaking in the declaration above specified and supposed to be made, the said *Francis* saith, that the said *W.* ought not to have his said action thereupon against him, because he saith, that after the 29th day of *September* in the year of our Lord 1714, *to wit*, on the said 5th day of *March* in the year of our Lord 1776, at *London* aforesaid, in the parish and ward aforesaid, it was corruptly agreed between the said *F.* and the said *C. N.* in the said declaration named, that

Issue.
The statute of usury to the first promise being on a promissory note indorsed.

* This plea ought to conclude to the country. *Wil. Rep.* 249. 258. *Gilb. Cas.* 328. *10 Mod.* 243. *Barnes* 236. *Fortesc. Rep.* 229, 232, 234, 245, 264. *2 Barnard. K. B.* 37. *Andr.* 176.

the said C. should lend to the said F. the sum of 10l. 10s. and should give day of payment thereof for the space of one month then next ensuing, *to wit*, until the fifth day of *April* in the year of our Lord 1777. And that the said F. for the loan of the said 10l. 10s. and for giving day of payment thereof for the time aforesaid, should give and pay to the said C. the sum of 5s. upon the said 5th day of *April* in the year last mentioned for the interest and gain thereof, and for giving day of payment of the said 10l. 10s. which said sum of 5s. exceeds the rate of 5l. for the interest of 100l. for one year, against the form of the statute in such case lately made and provided; And afterwards, *to wit*, on the said fifth day of *March* in the said year of our Lord 1744, at *London* aforesaid, in the parish and ward aforesaid, the said C. in pursuance of the said corrupt agreement, did advance and lend to the said F. the said sum of 10l. 10s. And the said F. on that occasion did sign and deliver to the said C. the said promissory note in the said declaration mentioned; And the said F. then and there paid the said sum of 5s. for the loan and interest of the said 10l. 10s. and for giving time for payment thereof for one month, *to wit*, until the said 5th day of *April* in the said year of our Lord 1777, in pursuance of and according to the form and effect of the said corrupt agreement, by means whereof the said promissory note in the said declaration above mentioned, by virtue of the statute in that case made and provided, is void in law: And this he is ready to verify: Wherefore he prayeth judgment if the said W. ought therefore to have his said action thereon against him, &c.

Stat. 12 Ann. c. 16.

Wm. Whitaker.

Cooke.

Trin. 24 & 25 Geo. 2.

AND the said J. B. in his proper person cometh and defendeth the wrong and injury, when, &c. And as to 36l. 2s. 11d. parcel of the said 50l. in the said promise and undertaking in the said declaration first mentioned and supposed to be made; And also as to the promises and undertakings in the said declaration, secondly, thirdly, and lastly, above mentioned and supposed to be made, saith, that he did not undertake and promise in manner and form as the said *Mary* above complaineth against him; And of this he putteth himself upon the country: And the said *Mary* doth likewise the same. And the said *John* as to 13l. 17s. 1d. residue of the said 50l. in

Plea as to part, non assumpsit.

Issue.

As to residue a the tender.

the said promise and undertaking in the said declaration first mentioned and supposed to be made, saith, that the said *Mary* ought not to recover any damages by reason of the nonpayment of the said 13l. 17s. 1d. residue of the said 50l. in the said promise and undertaking in the said declaration first mentioned, because he saith, that he the said *John* after the making of the said first promise and undertaking as to the said 13l. 17s. 1d. residue, &c. and before the day of exhibiting of the bill of the said *M.* against him the said *J. to wit*, on the said 30th day of *May* in the said year of our Lord 1751, at the parish of *St. Clement Danes* aforesaid in the said county of *Middlesex*, tendered and offered to pay to the said *M.* the said 13l. 17s. 1d. residue, &c. which said 13l. 17s. 1d. she the said *M.* then and there refused to accept or receive from the said *J.* And the said *J.* further saith, that he the said *J.* always from the time of making the said first promise and undertaking, as to the said 13l. 17s. 1d. residue, &c. hath hitherto been ready and still is ready to pay to the said *M.* the said 13l. 17s. 1d. and he bringeth the same here into court ready to be paid to the said *M.* if she will accept the same; And this he is ready to verify: Wherefore he prayeth judgment if the said *Mary* ought to recover any damages by reason of the nonpayment of the said 13l. 17s. 1d. residue, &c. thereof against him.

D. Poole.

Notice of set-off.

Mr. B. take notice that the defendant *J. B.* at the trial of the general issue herein above pleaded, will insist and give in evidence that the plaintiff *M. K.* before and at the time of exhibiting her bill against the said *J. B.* was and still is indebted to the said *J. B.* in the sum of 50l. of lawful money of *Great Britain*, for work, labour, care and attendances by the said *J. B.* in and about the prosecuting, defending and soliciting of divers causes, suits and businesses in the law for the said *Mary* at her special instance and request done, taken and performed, and for money paid, laid out and expended by the said *J.* for the said *M.* in and about the prosecuting, defending and soliciting of those causes, suits, and businesses, at her like instance and request, and for fees due and of right payable to the said *J.* in that respect; And also in the further sum of 50l. of like lawful money, for money by the said *J.* paid, laid out and expended for the said *M.* at her like instance and request; and for money by the said *Mary* had and received, to and for the use of the said

Which said several sums due and owing to the said *J.* from the said *M.* as aforesaid, the said *J.* doth intend to insist, at the trial of the general issue above pleaded, that the same or so much thereof as shall be sufficient may be set off against so much money, as shall appear to be due to the said *M.* upon the said several demands of the said *Mary* contained in the said declaration, to which the said *J.* hath pleaded the general issue, according to the statute in such case made and provided, dated this 21st day of *May* in the year of our Lord 1751.

To Mr. *J. B.* attorney
for the plaintiff.

Yours, &c. *J. B.* the
defendant.

And the said *Arundel Roberts* by *Thomas Holland* his attorney, cometh and defendeth the force and injury when, &c. and saith, that the said *Benjamin Lane* ought not to have or maintain his said action against him, because he saith, that after the making the said several promises and undertakings in the said declaration mentioned above supposed to be made, and before the day of exhibiting the said bill of the said *B.* against him, to wit, on the 10th day of *May* in the 13th year of the reign of the lord the now king, at the parish aforesaid in the said county, the said *B.* by his certain writing of release indented, sealed with the seal of the said *B.* and now shewn here to the court of our said lord the king, bearing date same day and year, did remise, release, and for ever quit-claim unto the said *A. R.* his heirs, executors and administrators, all and all manner of actions, cause and causes of actions, suits, bills, bonds, obligations, debts, dues, duties, reckonings, accounts, sum and sums of money, judgments, executions, extents, quarrels, controversies, trespasses, damages and demands whatsoever, which against him the said *A.* he the said *B.* his heirs, executors or administrators, should or might have, claim, challenge or demand for or by reason or means of any matter, cause or thing whatsoever, from the beginning of the world, to the day of the date of the said writing of release, as by the said writing of release, amongst other things, more fully appeareth: And this he is ready to verify: Wherefore he prayeth judgment, if the said *Benjamin* ought to have or maintain his said action against him, &c.

Plea, a release.

Proferit.

Nash Grose.

And the said *B.* saith, that he ought not, by any thing by the said *A.* above in pleading alledged, to be barred from

Replication.

from having or maintaining his said action in this behalf against him, because he saith, that he the said *B.* did not, after the making the several promises and assumptions in the said declaration mentioned, make such indenture of release as the said *A.* hath above in pleading alledged; and this he prayeth may be inquired of by the country: And the said *A.* doth so likewise.

Geo. Hill.

Hil. 16 Geo. 3.

Bar, a general
release in curia
jur assumpt.

Profrt.

AND the said *William Hammond* by *Nathaniel Traynor* his attorney, cometh and defendeth the force and injury, when, &c. and saith, that the said *Ann Davies* ought not to have or maintain her said action thereof against him, because he saith, that after the making the said several promises and undertakings in the said declaration mentioned above supposed to be made, and before the exhibiting the said bill of the said *Anne*, to wit, on the 15th day of *April* in the 15th year of the reign of the lord the now king at *Ludlow* aforesaid in the said county, the said *Ann* by her certain writing of release, sealed with the seal of the said *Ann*, and then and there made and duly executed by her, which said writing of release the said *William* bringeth here into court, the date whereof is the day and year last mentioned, for herself, her heirs, executors and administrators, did remise, release, and for ever quit-claim, unto the said *William*, his heirs, executors and administrators, all and all manner of action and actions, cause and causes of actions, suits, bills, bonds, writings, obligations, debts, dues, duties, reckonings, accounts, sum and sums of money, judgments, executions, extents, quarrels, controversies, trespasses, damages and demands whatsoever, both at law and in equity, or otherwise howsoever, which against the said *William* she ever had, then had, or which she the said *Ann*, her heirs, executors or administrators, could, should, or might have, claim, challenge or demand, for or by reason or means of any act, matter, cause or thing, from the beginning of the world, to the day of the date of the said writing of release; as by the said writing of release, amongst other things, more fully appeareth; And this he is ready to verify: Wherefore he prayeth judgment if the said *Ann* ought to have or maintain her said action thereof against him, &c.

D. P.

Replication,
durefs of im-
prisonment.

And the said *Ann* saith, that she, by any thing above alledged by the said *William* in pleading, ought not to be barred

barred from having her action aforesaid against him the said *William*, because she saith, that she the said *Ann* at the time of making the writing aforesaid, was imprisoned by him the said *William*, to wit, at *Ludlow* aforesaid in the said country, and was there detained in prison until she the said *Ann*, by force and duress of that imprisonment, then and there made the said writing to the said *William*; And this she is ready to verify: Wherefore she prayeth judgment, and her damages by reason of the premisses to be adjudged to her, &c.

F. R.

And the said *William* protesting, that the said *Ann*, at the time of making of the writing aforesaid, was not imprisoned, as the said *Ann* hath in and by her said replication above supposed, for rejoinder the said *William* saith, that the said writing was not made by force and duress of imprisonment, as the said *Ann* hath in her said declaration above alledged: And hereupon he putteth himself upon the country, &c. Verdict *pro* 2.

Rejoinder.

Case.

Account for money lent.

Another for money had and received.

London, *J. C.* late of, &c. was attached to answer unto *to wit*, *J. C.* to *T. F.* of a plea of trespass upon the case, &c. And whereupon the said *T.* by *P. W.* his attorney complaineth, that *whereas* there now is, and from time immemorial hath been, an antient and laudable custom used and approved of by and amongst merchants and other persons, residing, trading, and using commerce in parts beyond the seas, and merchants and other persons, residing, trading, and using commerce within this kingdom of *E. to wit*, that if any merchant or other person, residing, trading, and using commerce

in
Declaration in
case Sur ass. on
a foreign bill of
exchange by the
person to whom
made payable,
against the
drawer, the
drawee refusing
to accept it.
Pas. 10 G. 2.
ro. 1035. Lil.
Ent. 55. Custom
of merchants.

Plaintiff and defendant residing beyond sea, drawees residing in England.

Bill drawn by defendant payable to plaintiff.

in parts beyond the seas, shall have made any bill of exchange in writing, with his own proper hand thereto subscribed, and shall have directed such bill to any merchant or merchants, or other person or persons, residing, trading, and using commerce within this kingdom of *England*, and by such bill shall have required such merchant or merchants, or such person or persons, to whom such bill shall have been directed, to pay to any other merchant or other person residing, trading, and using commerce in parts beyond the seas, and named in such bill or order, any sum of money in such bill mentioned, at any time mentioned in such bill, and appointed by such bill for the payment thereof; and if such merchant or merchants, person or persons, to whom such bill shall have been directed, upon sight of such bill shall have refused to accept such bill, or to pay such sum of money in such bill mentioned, at the time mentioned in such bill for payment thereof, to such merchant or other person to whom or to whose order such sum of money in such bill mentioned, by such bill shall have been appointed to be paid; and if such merchant or other person, to whom or whose order such sum of money in such bill mentioned, by such bill shall have been appointed to be paid, shall have caused such bill to be protested in writing for such non-acceptance or non-payment thereof; Then such merchant or other person, who shall so have made such bill, upon notice of such non-acceptance or non-payment and protest, hath for all the time aforesaid been liable, and hath been used and accustomed to be liable, and for all the time aforesaid hath ought to have been liable, and still is liable to pay to such merchant or other person named in such bill, to whom or whose order such sum of money in such bill mentioned, by such bill shall have been so appointed to have been paid. *And whereas* at the several times hereafter next mentioned the said *J.* and *T.* were persons residing, trading, and using commerce in parts beyond the seas, *to wit*, at *St. Martin's* in the kingdom of *France*, and one *P. C.* and *D. C.* were persons residing, trading, and using commerce within this kingdom of *England*, *to wit*, at *London* aforesaid, and the said *P.* and *D.* were then and there partners in their said commerce; And being so respectively residing, trading, and using commerce as aforesaid, the said *J.* on the 3d day of *April* in the year of our Lord 1776, in parts beyond the seas, *to wit*, at *St. Martin's* aforesaid in the kingdom of *France*, made his certain bill of exchange in writing, with his own proper hand thereto subscribed, according

according to the custom aforesaid, and then and there directed the said bill, bearing date the same day and year, to the said *P.* and *D.* and by the said bill required the said *P.* and *D.* at two usances, to pay that his first bill of exchange to the said *T.* or order, 75l. 18s. sterling, value received of the *T.* and for balance of him the said *I.*'s account with the said *P.* and *D.* as by advice from the said *I.* Which said bill of exchange he the said *T.* afterwards, *to wit*, on the 16th day of April in the year of our Lord 1776, at London aforesaid, *to wit*, at the parish of *St. Mary le Bow* in the ward of *Chap*, shewed to the said *P.* and *D.* and then and there required the said *P.* and *D.* to accept the said bill, according to the said custom: But the said *P.* and *D.* then and there refused to accept the said bill, or ever to pay to the said *T.* the sum of money mentioned in the said bill, or any part thereof: By reason whereof he the said *T.* afterwards, *to wit*, on the same day and year last aforesaid, at London aforesaid, in the parish and ward aforesaid, caused the said bill to be duly protested in writing, for such non-acceptance thereof by the said *P.* and *D.* Of which said non-acceptance of the said bill, and of the said protest of the said bill for the said non-acceptance thereof, he the said *T.* afterwards, *to wit*, on the 17th day of April in the said year of our Lord 1776, at L. aforesaid, in the parish and ward aforesaid, gave notice to the said *I.* By reason of which said premisses, and according to the custom aforesaid, he the said *I.* became liable to pay to the said *T.* the said sum of money mentioned in the said bill; And being so liable, he the said *I.* in consideration thereof, afterwards, *to wit*, the same day and year last aforesaid, at L. aforesaid, in the parish and ward aforesaid, undertook, and then and there faithfully promised the said *T.* to pay him the said sum of money mentioned in the said bill, when he should be afterwards thereto requested. And whereas the said *I.* and *T.* and *P.* and *D.* being so respectively residing, trading, and using commerce as aforesaid, and the said *P.* and *D.* being partners in their said commerce as aforesaid, the said *I.* afterwards, *to wit*, on the said 3d day of April in the year of our Lord 1776, aforesaid, new style, in parts beyond the seas, *to wit*, at *St. Martin's* aforesaid in the said kingdom of France, made his certain other bill of exchange in writing, subscribed with his own proper hand, according to the said custom, and the said last mentioned bill bearing date the same day and year last aforesaid, directed to the said *P.* and *D.* and by the said last

Shewn to the drawees.

They refuse to accept it.

Bill protested.

Notice to defendant.

Assumpsit.

Second count.

Bill drawn by defendant payable to plaintiff.

Shewn to
drawees.

They refuse to
accept it.

Bill protested.

Notice to de-
fendant.

Third count.
Plaintiff, de-
fendant, and
drawees resid-
ing in London.

Bill drawn by
defendant paya-
ble to plaintiff.

last mentioned bill required the said *P.* and *D.* at two
ufances to pay that his first bill of exchange to the said
T. or order, other 75*l.* 18*s.* sterling, value received of
him the said *T.* and for balance of his the said *I.*'s ac-
count with the said *P.* and *D.* as by advice from the
said *I.* Which last mentioned bill of exchange he the
said *T.* afterwards, *to wit,* on the 26th day of *May* in
the year of our Lord 1776, aforesaid, at *London* afore-
said, in the parish and ward aforesaid, shewed to the said
P. and *D.* for their acceptance and payment thereof, and
then and there requested the said *P.* and *D.* to accept
and pay the last mentioned bill, according to the tenor
of the same bill, and the custom aforesaid: And the
said *P.* and *D.* then and there refused to accept the said
last mentioned bill, or ever to pay to the said *T.* the
said sum of money mentioned in the said last mention-
ed bill, or any part thereof: By reason of which said
last mentioned premisses he the said *T.* afterwards, *to
wit,* on the same day and year last aforesaid, at *L.* afore-
said, in the parish and ward aforesaid, caused the said
last mentioned bill to be duly protested in writing for
such non-acceptance and non-payment thereof by the
said *P.* and *D.* Of which said non-acceptance and non-
payment of the said last mentioned bill, and of the
said last mentioned protest of the said last mentioned
bill for the said non-acceptance and non-payment there-
of, he the said *T.* afterwards, *to wit,* on the said 26th
day of *May* in the year of our Lord 1776, aforesaid at
L. aforesaid, in the parish and ward aforesaid, gave no-
tice to the said *I.* by reason whereof, and according to
the custom aforesaid, he the said *I.* became liable [ut
supra] And whereas at the several times hereafter men-
tioned the said *I.* and *T.* and *P.* and *D.* were persons
residing, trading, and using commerce within this king-
dom of *England*, *to wit,* at *L.* aforesaid, in the parish
and ward aforesaid, and the said *P.* and *D.* were then
and there partners in their said commerce, and being so
residing, trading, and using commerce, the said *I.* af-
terwards, *to wit,* on the 3^d day of *April* in the year of
our Lord 1776, at *L.* aforesaid, in the parish and ward
aforesaid, made his certain other bill of exchange in
writing, subscribed with his own proper hand, accord-
ing to the custom of merchants from time immemorial
used and approved, and the said last mentioned bill,
bearing date the same day and year last aforesaid, di-
rected to the said *P.* and *D.* and by the said last men-
tioned bill required the said *P.* and *D.* at two ufances to
pay that his first bill of exchange to the said *T.* or or-
der

der, other 75l. 18s. sterling, value received of the said *T.* and for balance of his the said *I.*'s account with the said *P.* and *D.* as by advice from the said *I.* which said last mentioned bill of exchange he the said *T.* afterwards, *to wit*, on the 16th day of *June* in the year of our Lord 1776, aforesaid, at *L.* aforesaid, at the parish and ward aforesaid, shewed to the said *P.* and *D.* and then and there required the said *P.* and *D.* to accept the said last mentioned bill according to the said custom; but the said *P.* and *D.* then and there wholly refused to accept the said last mentioned bill, or ever to pay to the said *T.* the said sum of money specified in the said last mentioned bill, or any part thereof: Of all which said last mentioned premisses he the said *I.* afterwards, *to wit*, on the 8th day of *June* in the year aforesaid, at *L.* aforesaid, in the parish and ward aforesaid, had notice. By reason of which said last mentioned premisses, and according to the said custom, and by the law of merchants, he the said *I.* became liable [*ut supra.*]

Shewn to drawees.

They refuse to accept it.

Notice to defendant.

Indeb. ass. for money lent and accommodated 1 Jan. 1776.

Had and received.

Laid out and expended.

Middlesex, *G. B.* late of, &c. was attached to answer *to wit*, *A. M.* and *F. C.* assignees of the goods, debts and chattels of *H. V.* a bankrupt, according to the form of the statutes concerning bankrupts made and provided, in a plea of trespass on the case, &c. And whereupon the said *A. M.* and *E. C.* by *W. W.* their attorney complain, *That whereas* the said *G.* after the 1st day of *May* in the year of our Lord 1705, and before he the said *H. V.* became a bankrupt, *to wit*, the ——— day of ——— in the year of our Lord ———, at *W.* in the said county of *M.* made his certain note in writing, commonly called a promissory note, with his own proper hand thereto subscribed, bearing date the same day and year last mentioned, and the same note to one *J. M.* did then and there deliver, by which said note the said *G.* promised to pay to the said *J. M.* by the name of *J. M.* Esq; or order, *one month after date*, ——— value received; and by reason thereof, and also by force of the statute in such case made and provided, the said *G.* became chargeable to pay to the said *J. M.* or his order, the same sum of money, according to the tenor of the said note. And the said *J. M.* after the making

Declaration in case Sur ass. by the assignees of the effects of a bankrupt.

On a promissory note drawn by defendant, and indorsed to the bankrupt.

Indorsement.

Notice.

Assumpsit.

Indeb. assump.
for money lent
by the bank-
rupt.

Breach.

of the said note, and before the said sum mentioned in the said note, or any part thereof, was paid to him, and also before the time by the said note appointed for payment thereof, and also before the said *H. N.* became a bankrupt, *to wit*, the same day and year last mentioned, at *W.* aforesaid, indorsed the said note, with his own proper hand thereunto subscribed, and by the said indorsement appointed the contents of the said note to be paid to the said *H. V.* for value received, and for that purpose the said *J. M.* did then and there deliver the said note so indorsed to the said *H. V.* Whereof the said *G.* afterwards, *to wit*, the day and year last mentioned, at *W.* aforesaid, had notice; and by reason thereof, and also by force of the statute in such case made and provided, the said *G.* became chargeable to pay to the said *H. V.* the same sum of money, according to the tenor of the same note, and of the indorsement thereon. And being so chargeable, the said *G.* in consideration thereof, afterwards, and before the said *H. V.* became a bankrupt, *to wit*, the ——— day of ——— in the year of our Lord ——— at *W.* aforesaid, undertook, and to the said *H. V.* then and there faithfully promised to pay to the said *H. V.* the same sum of money mentioned in the said note, according to the indorsement thereon, when afterwards he should be thereunto required. And whereas also the said *G.* afterwards, and before the said *H. V.* became a bankrupt, *to wit*, the said ——— day of ——— in the year of our Lord ——— at *W.* aforesaid, was indebted to the said *H. V.* in ——— of good and lawful money of *Great Britain*, for such a sum of money by the said *H. V.* to the said *G.* and at the special instance and request of the said *G.* before that time lent and accommodated; and being so indebted, the said *G.* in consideration thereof, afterwards, and before the said *H. V.* became a bankrupt, *to wit*, the day and year last mentioned, at *W.* aforesaid, undertook, and to the said *H. V.* then and there faithfully promised to pay to the said *H. V.* the said ——— last mentioned, when afterwards he should be thereunto required. Nevertheless, the said *G.* not regarding his said several promises and undertakings aforesaid, in form aforesaid made, but contriving and fraudulently intending the said *A.* and *E.* in this behalf craftily and subtilly to deceive and defraud, hath not yet paid the said several sums of money or any part thereof to the said *H.* at any time before he the said *H.* became a bankrupt, or to the said *A.* and *E.* or either of them, at any time after the said *H.* became a bankrupt, (altho' the said *G.* afterwards, *to wit*, the said

saïd ——— day of ——— in the saïd year of our Lord ———, and oftentimes afterwards, before he the saïd *H.* became a bankrupt, and after the saïd *H.* became a bankrupt, *to wit*, the ——— day of ——— in the year of our Lord 1776, and oftentimes as well before as after, by the saïd *A.* and *E.* at *W.* aforesaid, was thereunto required), but he hath hitherto altogether refused, and still doth refuse to pay or in any wise to content them or either of them for the same, to the damage of the saïd *A.* and *E.* 12*l.* And thereof they bring suit, &c.

London, *W. B.* late of, &c. executor of the testament *to wit*, and last will of *R. B.* widow, deceased, was attached to answer *W. C.* in a plea of trespass on the case, &c. And whereupon the saïd *W. C.* by *J. C.* his attorney complaineth, *That whereas* after the 1st day of May which was in the year of our Lord 1705, *to wit*, on the ——— day of ——— in the year of our Lord ———, the saïd *R.* in her life-time at *L. to wit*, at the parish of St. Bridget, otherwise *Bride's*, in the ward of *Farringdon without*, made her certain note in writing, called a promissory note, subscribed with the proper hand and name of her the saïd *R.* bearing date the same day and year last aforesaid, and the same note so subscribed then and there, *to wit*, on the same day and year last above mentioned, at *L.* aforesaid in the parish and ward aforesaid, delivered to one *R. B.* by which note the saïd *R.* promised to pay to the same *R. B.* or order, 4*l.* *three months after date*, for value in the same note mentioned to be received. And the saïd *R.* (to whom or to whose order the payment of the saïd money in the same note contained was appointed to be made) afterwards, and before the payment of the money in the saïd note contained, *to wit*, on the same ——— day of ——— in the saïd year of our Lord ———, at *L.* aforesaid, in the parish and ward aforesaid, by a certain indorsement in writing, subscribed with the proper hand of the saïd *R.* and indorsed upon the same note, did assign the aforesaid note, and by that indorsement did appoint and order the contents of the aforesaid note to be paid to one *M. T.* or her order, for value in the same indorsement mentioned to be received. And the aforesaid *M.* (to whom or to whose order the payment of the saïd sum of money contained in the same note was by the same indorsement appointed to be made) afterwards, and before the payment of the money aforesaid contained in the saïd note, *to wit*, on

Declaration in case Sur ass. against an executor.

By the second indorsee of a promissory note drawn by the testatrix.

First indorsement.

Second indorsement.

Notice.

Assumpsit.

Declaration in
case, Sur ass.Indeb. ass.
for work, &c.
in the business
of a musician
at the play-
house.Quantum me-
ruit thereon.

the same ——— day of ———, in the year of our Lord ——— above said, at *L.* afore said in the parish and ward afore said, by another indorsement in writing, subscribed with the proper hand of the said *M.* and indorsed upon the said note, did assign the same note, and by that indorsement did appoint and order the contents of the afore said note to be paid to the said *W. C.* according to the tenor of the afore said note. *Of which* said indorsements the said *R.* in her life-time afterwards, *to wit*, on the same ——— day of ——— in the year of our Lord ——— afore said, at *L.* afore said, in the parish and ward afore said, had notice by the said *W. C.* *By reason* of which said premisses, and also by force of the statute in that case lately made and provided, the afore said *R.* in her life-time was and became chargeable to pay to the said *W. C.* the said sum of 40*l.* in the said note contained, according to the tenor of the same note, and of the said two indorsements thereon made as afore said. *And being* so chargeable, &c.

Middlesex, *J. R.* late of the parish of *St. Paul, Covent to wit. J. Garden, Esq;* was attached to answer *J. F. L.* of a plea of trespass upon the case, &c. *And whereupon J. F. L.* by *J. S.* his attorney complaineth, *That whereas* the said *J. R.* on the 1st day of *August* in the year of our Lord 1772, at *W.* in the said county of *M.* was indebted to the said *J. F. L.* in the sum of 100*l.* of good and lawful money of *Great Britain*, for certain work, labour, attendance and service of the said *J. F. L.* before that time done and performed by the said *J. F. L.* in his business of a musician, at the Theatre Royal in *Covent Garden*, for the said *J. R.* at his special instance and request; and also for other work and labour done and performed by him the said *J. F. L.* for the said *J. R.* at his like instance and request; and being so indebted, he the said *J. R.* in consideration thereof, afterwards, that is to say, on the same day and year afore said, at *W.* afore said, undertook, and to the said *J. F. L.* then and there faithfully promised to pay him the said sum of money. *And whereas also* the said *J. R.* afterwards, that is to say, on the same day and year afore said, at *W.* afore said, in consideration that the said *J. F. L.* at the special instance and request of the said *J. R.* had before that time done and performed certain other work, labour, attendance and service in his business of a musician, at the theatre royal in *Covent Garden* afore said; and also other work and labour for the said *J. R.* at his like instance and request, undertook, and to the said *J. F. L.* then

then and there faithfully promised to pay to him so much money as he the said *J. F. L.* had reasonably deserved to have from the said *J. R.* for the same. And the said *J. F. L.* doth aver, that he reasonably deserved to have from the said *J. R.* for the same, another sum of 100*l.* of like lawful money, that is to say, at *W.* aforesaid, whereof the said *J. R.* afterwards, that is to say, on the same day and year aforesaid, there had notice. And whereas also the said *J. R.* afterwards, that is to say, on the same day and year aforesaid, at *W.* aforesaid, was indebted to the said *J. F. L.* in the further sum of 100*l.* of like lawful money of *Great Britain*, for certain work, labour, attendance and service of *I.* the wife of the said *J. F. L.* before that time done and performed by the said *I.* the wife of the said *J. F. L.* whilst she was the wife of the said *J. F. L.* in her business of an actress and singer at the theatre royal in *Covent Garden* aforesaid; and also for other work, labour and service done and performed by her whilst she was the wife of the said *J. F. L.* for the said *J. R.* at his special instance and request; and being so indebted, he the said *J. R.* in consideration thereof, afterwards, that is to say, on the same day and year aforesaid, at *W.* aforesaid, undertook, and to the said *J. F. L.* then and there faithfully promised to pay to him the last mentioned sum of money. And whereas also the said *J. R.* afterwards, that is to say, on the same day and year aforesaid, at *W.* aforesaid, in consideration that the said *I.* the wife of the said *J. F. L.* at the special instance and request of the said *J. R.* had before that time, whilst she was the wife of the said *J. F. L.* done and performed certain other work, labour, attendance and service, in her business of an actress and singer at the theatre royal in *Covent Garden* aforesaid, and other work and labour for the said *J. R.* at his like instance and request undertook, and to the said *J. F. L.* then and there faithfully promised to pay him so much money as he had reasonably deserved to have from the said *J. R.* for the same: And the said *J. F. L.* doth aver, that he reasonably deserved to have from the said *J. R.* for the same another sum of 100*l.* of like lawful money of *Great Britain*, that is to say, at *W.* aforesaid, whereof the said *J. R.* afterwards, that is to say, on the same day and year aforesaid, there had notice*. Nevertheless the said *J. R.* not regarding his

Indeb. ass. for work, &c. by plaintiff's wife, in the business of an actress and singer at the playhouse.

Quantum meruit thereon.

Breach.

* *Indeb. assumpsit* by baron and feme, for work done by the wife, *ad damnum ipsorum*, upon a special promise made to the wife only, the wife must be made a party to the action, but not on a promise implied

his said several promises and undertakings so made as aforesaid, but contriving and fraudulently intending to deceive and defraud the said *J. F. L.* in this behalf, hath not paid to him the said several sums of money, or any of them, or any part thereof; although to pay the same to him the said *J. F. L.* he the said *J. R.* afterwards, that is to say, on the same day and year aforesaid, at *W.* aforesaid, was requested by the said *J. F. L.* but the said *J. R.* to pay the same to him hath hitherto altogether refused, and doth yet refuse, to the damage of the said *J. F. L.* of 150*l.* And thereof he bringeth suit, &c.

Declaration in
case Sur assump-
sit.

Indeb. ass. for
meat, drink,
washing and
lodging, found
for defendant's
wife.

Quantum me-
ruit thereon.

London, to wit, *R. L.* late of, &c. was attached to answer unto *J. R.* in a plea of trespass on the case, &c. And whereupon the said *J.* by *L. R.* his attorney complaineth, *That whereas* the said *R.* on the ——— day of ——— in the year of our Lord 1734, at *L.* to wit, in the parish of *St. Mary le Bow* in the ward of *Cheap*, was indebted unto the said *J.* in 12*l.* for meat, drink, washing and lodging, by the said *J.* before that time found and provided for * one *H.* the wife of the said *R.* at the special instance and request of the said *R.* and being so indebted, he the said *R.* in consideration thereof, afterwards, to wit, the same day and year aforesaid, at *L.* aforesaid, in the parish and ward aforesaid undertook, and then and there faithfully promised the said *J.* to pay him the said sum of money, when he should be afterwards thereunto requested. And whereas afterwards, to wit, the same day and year aforesaid, at *L.* aforesaid, in the parish and ward aforesaid, in consideration that the said *J.* had before that time found and provided

implied by law; the law will not imply any promise made to the wife, she is servant to the husband, who was at the charge in providing materials, &c. to carry on the trade; therefore he ought to have the recompence, and therefore the law implies the promise was made to him only. Judgment *quod nil capiat per billam.* Carth. 251.

* The husband and wife lived separate, she boarded in the plaintiff's house, who declares against the husband, as for meat and drink found and provided for the husband. On evidence it appeared to be for the wife. *Eyre C. J.* held it did not support the declaration: for though the husband is chargeable upon his implied contract for what necessaries are administered to the wife, and therefore if goods are delivered to her, the vendor may declare generally for goods sold and delivered; yet in this case the plaintiff fails in his description of the subject matter of the contract; so that where he now declares generally, a recovery in this action could not be pleaded in bar to a special action for meat and drink found and provided for the wife, *Trin. 12 G. 1. Hadley v. Collins.* MS. Notes.

provided other meat, drink, washing and lodging for the said *H.* the said wife of the said *R.* and at the like special instance and request of the said *R.* he the said *R.* undertook, and then and there faithfully promised the said *J.* to pay him so much money as he therefore reasonably deserved to have: And the said *J.* doth aver, that he therefore reasonably deserved to have of the said *R.* other 12*l.* *to wit*, at *L.* aforesaid, in the parish and ward aforesaid; whereof the said *R.* then and there had notice. *Yet, &c.*

Breach.

Memorandum
of a bill against
an attorney.Bill in case Sur
assumpsit
against an
attorney.Indeb. ass. for
the use and oc-
cupation of a
messuage.Quantum me-
ruit.

Middlesex, to wit: *Be it remembered*, that on the — day of —, in this same term, *T. H.* came here into court by *S. G.* his attorney, and exhibited to the justices of our lord the king here his certain bill against *L. J.* one of the attornies of the court of our lord the king of the bench present here in court in his own proper person, of a plea of trespass on the case, which said bill followeth in these words, *to wit*, *Easter term* in the 10th year of the reign of king *George III.* To the justices of our lord the king of the common bench, *Middlesex*, to wit, *T. H.* by *J. G.* his attorney complaineth of *L. J.* one of the attornies of the court of the bench of our sovereign lord the king present here in court in his own proper person, *for that whereas* the said *L.* the 1st day of *April* in the year of our Lord 1769, at *W.* in the said county of *M.* was indebted to the said *F.* in 60*l.* of lawful money of *Great Britain*, for the use and occupation of a certain messuage, or tenement and garden, with the appurtenances, of him the said *T.* lying and being at *H.* in the county aforesaid, before that time held, used and occupied by the said *L.* at his special instance and request from the said *T.* and by his permission; and being so indebted, the said *L.* afterwards, that is to say, the same day and year aforesaid, at *W.* aforesaid in the county aforesaid, in consideration thereof undertook, and then and there faithfully promised the said *T.* to pay him the said sum of money when he should be thereto required. *And also whereas* the said *L.* afterwards, that is to say, the same day and year aforesaid, at *W.* aforesaid in the county aforesaid, in consideration that the said *T.* at the like special instance and request of him the said *L.* had before that time permitted him the said *L.* to have and use a certain other messuage or tenement and garden, with the appurtenances of him the said *T.* lying and being in *H.* aforesaid in the county aforesaid, undertook, and then and there faithfully promised the said *T.* to pay him so much money as he had reasonably deserved to have for the same,

same, when he the said *L. J.* should be thereto required: And the said *T.* in fact saith, that he reasonably deserved to have for the same from the said *L.* other 60*l.* of like lawful money, *to wit*, at *W.* aforesaid in the county aforesaid; whereof the said *L.* afterwards, *to wit*, the same day and year aforesaid, at *W.* aforesaid in the county aforesaid had notice. *Yet, &c.*

Declaration in
case Sur. ass.
against the
survivor, on a
joint promise.

Indeb. ass. for
money had and
received.

Middlesex, to wit, *W. P.* late of the parish of *St. Clement Danes* in the county of *Middlesex*, vintner, was attached to answer *J. F.* and *T. G.* in a plea of trespass upon the case, &c. And whereupon the said *J.* and *T.* by *H. S.* their attorney complain, that *whereas* the said *W.* together with one *T. T.* lately deceased (whom the said *W.* survived) in the life of the said *T. T.* that is to say, on, &c. at, &c. were indebted to the said *J. F.* and *T. G.* in 100*l.* of lawful money, &c. for so much money by the said *W. P.* and *T. T.* in the life-time of the said *T. T.* of the said *J. F.* and *T. G.* and to the use of the said *J. F.* and *T. G.* before that time had and received; and being so indebted, the said *W. P.* and *T. T.* in consideration thereof, afterwards, that is to say, on the same day and year at, &c. undertook, and to the said *J. F.* and *T. G.* then and there faithfully promised that they the said *W. P.* and *T. T.* would well and faithfully pay and content the said 100*l.* to the said *J. F.* and *T. G.* when they should be thereunto afterwards requested. *And also whereas* afterwards that is to say, on the same day and year above-said at, &c. the said *W. P.* and *T. T.* in the life-time of the said *T. T.* were indebted [for money lent] *Nevertheless* the said *W. P.* and *T. T.* in the life-time of the said *T. T.* and the said *W. P.* after the death of the said *T. T.* not regarding their said several promises and undertakings made in form aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *J. F.* and *T. G.* in this behalf, have not paid, nor has either of them paid the said several sums of money, or any of them, or any part thereof, to the said *J. F.* and *T. G.* or to either of them, (although so to do the said *W. P.* after the death of the said *T. T.* that is to say, on the 3d day, &c. at, &c. was requested by the said *J. F.* and *T. G.*) but they wholly refused, and the said *W. P.* still refuseth to pay the same to them, or any ways to content them for the same, to the damage of the said *J. F.* and *T. G.* of 100*l.* And therefore they bring suit, &c.

Indeb. ass.
for money lent.

Harley Vaughan.

London,

London, to wit, *E. H.* late of, &c. and *T. T.* late of, &c. were attached to answer *J. B. G. C.* and *W. C.* assignees of the debts, goods and chattels of *A. B.* and *B. R.* bankrupts, according to the form of the statute made and provided concerning bankrupts, in a plea of trespass on the case, &c. And whereupon the said *J. G.* and *W.* by *H. S.* their attorney complain, wherefore *whereas* the said *E.* and *T.* on the 30th day, &c. at, &c. were indebted to the said *J. G.* and *W.* as being assignees of the debts, goods and chattels of the said *A.* and *B.* bankrupts as aforesaid, in 50*l.* of lawful money, &c. for so much money by the said *E.* and *T.* of the said *A.* and *B.* before that time had and received; and being so indebted, &c. undertook, and to the said *J. G.* and *W.* then and there faithfully promised that, &c. to the said *J. G.* and *W.* when, &c. And also *whereas* the said *E.* and *T.* afterwards, that is to say, on the same 30th day, &c. at, &c. accounted together with the said *J. G.* and *W.* being assignees, &c. as aforesaid, concerning divers other sums of money to the said *J. G.* and *W.* as being assignees, &c. as aforesaid, before that time due, and then being in arrear and unpaid, and on the said account the said *E.* and *T.* then and there were found in arrear to the said *J. G.* and *W.* in 48*l.* 16*s.* 6*d.* of like lawful money, &c. and being so found in arrear, &c. Nevertheless, the said, &c. intending the said *J. G.* and *W.* in this behalf craftily, &c. or any part thereof, to the said *J. G.* and *W.* or to either of them, (although often requested) have not, nor has either of them paid, but have intirely refused, and still do refuse to pay the said several sums of money to the said *J. G.* and *W.* or any ways content them for the same, to the damage of the said *J. G.* and *W.* of 50*l.* And thereupon they bring suit, &c.

Declaration in case Sur ass by assignees of the goods of a bankrupt.

Indeb. ass. for money had and received.

Insimul computassent.

Breach.

John Aspinall.

Huntingdonshire, to wit, *H. F.* late of *H.* in the county aforesaid, innholder, executor of the testament of *T. W.* was attached to answer *T. L. J. H.* and *E. C.* of a plea of trespass on the case, &c. And whereupon the said *T. L. J.* and *E.* by *R. C.* their attorney complain. Wherefore *whereas* the said *T. W.* in his life-time, to wit, on the 5th day of *October* in the 32d year of the reign of our sovereign lord *Charles II.* now king of *England*, &c. at *H.* was indebted to the said *T. L. J.* and *E.* in 100*l.* of lawful money of *England*, as well for money by the said *T. W.* in his life-time before that time had and received of the said *T. L. J.* and *E.* as for money by the said *T. W.* in his life-time before that time had and

Declaration in case Sur ass. against an executor for money had and received of and for the plaintiffs, and to their use.

3 D. A. 393.

p. 13. S. C.

3 Lev. 57.

S. C.

Tr. 33 Car. 2.

Ro. 1097,

1098, 1999.

Breach.

and received for the said *T. L. J.* and *E.* to the proper use of the said *T. L. J.* and *E.* and the said *T. W.* being so thereupon indebted, the said *T. W.* in his life-time afterwards, *to wit*, on the same day and year at *H.* aforesaid, in consideration thereof undertook, and to the said *T. L. J.* and *E.* then there faithfully promised that he the said *T. W.* would well and truly pay and content the said 100*l.* to the said *T. L. J.* and *E.* when he should be thereunto afterwards requested. Yet the said *T. W.* in his life-time, and the said *H.* after the death of the said *T. W.* not minding his said promise and undertaking, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *T. L. J.* and *E.* in this behalf, have not paid or in any manner satisfied, nor has either of them paid or in any manner satisfied the said 100*l.* or any part thereof, to the said *T. L. J.* and *E.* or to either of them; although afterwards the said *T. L.* in his life-time, *to wit*, on the 10th day of *November* in the 32d year aforesaid, and the said *H.* after the death of the said *T. W.* *to wit*, on the 7th day of *December* in the 32d year aforesaid, at *H.* aforesaid, were thereunto severally requested by the said *T. L. J.* and *E.* but they intirely refused to pay them the same, and the said *H.* still refuseth to pay them the same, to the damage of the said *T. L. J.* and *E.* of 120*l.* And thereof they bring suit, &c.

Plea.

A bond entered
into by the tes-
tator.

Defendant im-
pleaded there-
on.

And the said *H.* by *G. M.* his attorney cometh and defendeth the force and injury, when, &c. and saith that the said *T. L. J. H.* and *E. C.* ought not to have their said action against him, &c. Because he saith that the said *T. W.* in his life-time, *to wit*, on the 6th day of *September* in the 32d year of the reign of our sovereign lord *Charles II.* now king of *England*, &c. at *H.* aforesaid, by his certain writing obligatory acknowledged himself to be bound to one *D. H.* in 40*l.* to be paid to the said *D. H.* when he should be thereunto requested; which said writing was made by the said *T. W.* to the said *D. H.* for a true and just debt, and which at the time of the death of the said *T. W.* was no ways paid or satisfied by the said *T. W.* to the said *D. H.* Whereby the said *D. H.* after the death of the said *T. W.* (the said debt not being satisfied) *to wit*, in the term of the *Holy Trinity* in the 33d year of the reign of our lord the now king, in the court of our lord the king before Sir *Francis North*, knight, and his companions, then justices of the said lord the king of the bench here, *to wit*, at *W.* impleaded the said *H.* of and for the said 40*l.* then and yet unpaid, by the writ of

our

our said lord the king, of debt, returnable and returned in the said court; in which said plea the said parties appearing in the same court, the said *D. H.* by *R. C.* then his attorney said, that whereas the said *T.* in his life-time, on the 6th day of *September* in the 33d year of the reign of our sovereign lord *Charles II.* now king of *England*. &c. at *H.* aforesaid, by his certain writing obligatory acknowledged himself to be bound to the said *D. H.* in the said 40l. to be paid to the said *D. H.* when he should be thereunto requested; yet the said *T.* in his life-time, and the said *H. F.* after the death of the said *T. W.* although often required, had not rendered the said 40l. to the said *D. H.* but had intirely refused to render the same to him, and the said *H. F.* then refused to render the same to the said *D. H.* and unjustly detained; wherefore he then said that he was injured, and had damage to the value of 40l. and thereof he brought suit, &c. And he then brought here into court the said writing, which testified the said debt in form aforesaid, the date whereof was on the day and year aforesaid, &c. And the said *H.* by *G. M.* his attorney came and defended the force and injury, when, &c. and the same attorney then said that he was not informed by the same *H. F.* his matter of any answer to be given in the said plaint for the said *H. F.* to the said *D. H.* and he said nothing else thereupon; whereby the said *D. H.* remained thereupon undefended against the said *H. F.* Therefore it was considered by the same court, that the said *D. H.* should recover against the said *H. F.* his said debt, and his damages by the occasion of the detaining that debt, to 40s. adjudged by the court here to the said *D. H.* by his assent to be levied of the goods and chattels which were the said *T. W.*'s at the time of his death in the hands of the said *T.* to be administered, if he had so much in his hands to be administered, and if he had not, then the said damages to be levied of the proper goods and chattels of the said *H.* and that the said *H. F.* should then be in mercy, &c. as by the record and process thereupon remaining in the same court of our said lord the king here plainly appeareth: Which said judgment so as aforesaid obtained, was obtained for a true and just debt, and still remaineth in its full force and effect, no ways reversed or annulled; and the said debt and damages still remain in arrear unpaid to the said *D.* And the said *H. F.* further saith, that the said *T. W.* in his life-time, to wit, on the said 6th day of *September* in the 32d year of the reign of our said lord the present king, at *H.* aforesaid, by his certain other writing obligatory acknowledged

And judgment
against him by
Non informatus.

Another bond
entered into by
the testator.

Another bond
entered into by
the testator.

Another bond
entered into by
the testator.

Rent due by
testator on a
lease parol.

knowledged himself to be bound to the said *D. H.* in other 40*l.* to be paid to the said *D. H.* when he should be thereunto required; which said writing obligatory last mentioned was also made by the said *T.* to the said *D. H.* for another true and just debt, and which at the time of the death of the said *T. W.* was no ways paid or satisfied by the said *T. W.* to the said *D. H.* and the said writing obligatory still remaineth in its full force and effect, and the said debt at the time of the death of the said *T. W.* was in arrear, and still is in arrear unpaid to the said *D. H.* And the said *H. F.* further saith, that the said *T. W.* in his life-time, *to wit*, on the said 6th day of *September* in the said 32d year of the reign of our said lord the present king, at the town of *H.* aforesaid, by his certain other writing obligatory acknowledged himself to be bound to the said *D. H.* in other 40*l.* of lawful money of *England*, to be paid to the said *D.* when he should be thereunto required; which said writing obligatory last mentioned was also made by the said *T.* to the said *D.* for another true and just debt, and which at the time of the death of the said *T. W.* was no ways paid or satisfied by the said *T. W.* to the said *D. H.* and the same writing obligatory still remaineth in its full force and effect; and that debt at the time of the death of the said *T. W.* was in arrear, and still is in arrear unpaid to the said *D. H.* And the said *H. F.* further saith, that the said *T. W.* in his life-time, *to wit*, on the said 6th day of *September* in the said 32d year of the reign of our said lord the present king, at *H.* aforesaid, by his certain other writing obligatory acknowledged himself to be bound to the said *D. H.* in other 40*l.* of like lawful money of *England*, to be paid to the same *D. H.* when he should be thereunto required; which said writing obligatory last mentioned was also made by the said *T. W.* in his life-time to the said *D. H.* for another true and just debt, and which at the time of the death of the said *T. W.* was no ways paid or satisfied by the said *T. W.* to the said *D. H.* and the same writing obligatory still remaineth in its full force and effect, and that debt at the time of the death of the said *T. W.* was in arrear, and still is in arrear unpaid to the said *D. H.* And the said *H. F.* further saith, that the right honourable *E.* earl of *S.* on the 25th day of *March* in the year of our Lord 1677, at the town of *H.* in the county aforesaid, demised to the said *T. W.* in his life-time one messuage called the priory-house, one dove-house, one close of pasture called the priory-close, one other close of pasture called *Jeas Grove*, one other close or pasture called *Straughton's Grove*, one other close called

called *Middle St. Herbert's*, and three other closes of pasture called the *Infield closes*, with the appurtenances, within the parish of *St. Mary* in the town of *H.* aforesaid; To have and occupy the said tenements to the said *T. W.* from the said 25th day of *March* in the year of our Lord 1677, aforesaid, until the end and term of one whole year thence next ensuing, and fully to be complete and ended, and so from year to year, so long as it should please both the said parties: Rendering therefore yearly, so long as the said *T. W.* should hold and occupy the said tenements with the appurtenances, by virtue of the said demise, to the said earl and his assigns 56l. of lawful money of *England*, to be paid at the feasts of *St. Michael* the archangel, and the annunciation of the blessed Virgin *Mary*, by equal portions; by virtue of which said demise the said *T.* in his life-time, on the 26th day of *March* in the year of our Lord 1677, aforesaid, entered into the said tenements, with the appurtenances, and was possessed thereof and occupied the said tenements by the space of three years and the half of one year thence next ensuing, and 56l. of the rent aforesaid at the feast of *St. Michael* the archangel last past for one whole year then ended, were in arrear unpaid by the said *T. W.* in his life-time to the said earl; which said 56l. for the rent aforesaid, so as aforesaid due, were a true and just debt, and at the time of the death of the said *T. W.* was no ways paid or satisfied by the said *T. W.* to the said earl; whereby the said earl, after the death of the said *T. W.* (the same debt not being satisfied) *to wit*, in the term of the *Holy Trinity* in the 33d year of the reign of our lord the present king. in the court of our said lord the king before Sir *Francis North*, knt. and his companions, then justices of our said lord the king of the bench here, *to wit*, at *W.* impleaded the said *H. F.* after the death of the said *T. W.* of and for the said 56l. then and still unpaid, by the writ of our said lord the king of debt returnable and returned in the same court; in which said plea the said parties appearing in the same court, the said earl by *J. R.* his attorney then said, that he the same earl on the 25th day of *March* in the year of our Lord 1677, at *H.* aforesaid, had demised to the said *T. W.* in his life-time one messuage called the priory-house, one, &c. (*ut supra*) with the appurtenances, within the parish of *St. Mary* in *H.* aforesaid; To hold and occupy to the said *T. W.* from the said 25th day of *March* in the year of our Lord 1677, aforesaid, unto the full end and term of one whole year thence next ensuing and fully to be complete and ended, and so from year to year so long

Defendant impleaded thereon.

And judgment
against him by
Non sum infor-
matus.

Testator in-
debted upon an
Insimul com-
putasset.

as it should please both the said parties ; rendering there-
fore yearly, so long as the said *T. W.* should occupy the
said tenements with the appurtenances, to the said earl
and his assigns 56l. of lawful money of *England*, to be
paid at the feast of *St. Michael* the archangel, and the
annunciation of the blessed *Virgin Mary*, by equal por-
tions : By virtue of which said demise the said *T. W.*
entered into the said tenements with the appurtenances,
and was possessed thereof and occupied the same tene-
ments by the space of three years and the half of one
year, and 56l. of the rent aforesaid were in arrear un-
paid by the said *T. W.* to the said earl at the feast of *St.*
Michael the archangel last past, for one whole year then
ended, whereby an action accrued to the said earl to
demand and have of the said *T. W.* in his life-time the
said 56l. Yet the said *T. W.* in his life-time, and the
said *H. F.* after the death of the said *T. W.* altho' often
requested, had not then rendered, nor had either of
them rendered the said 56l. but they had to that time
refused to render the same to him, and the said *H.* then
refused to render the same to him, and unjustly detained
the same : Whereupon he then said that he was injured,
and had damages to the value of 40l. And therefore he
then brought suit. And the said *H. F.* by *G. M.* his attor-
ney came and defended the force and injury, when, &c.
and the same attorney then said that he was not informed
by the said *H. F.* his master of any answer to be given
in the said plaint for the said *H.* to the said earl, and said
nothing else thereupon ; whereby the said earl remained
theretupon undefended against the said *H. F.* Therefore
it was then considered by the said court, that the said
earl should recover against the said *H. F.* his said debt,
and his damages by occasion of the detaining that debt
to 40s. adjudged by the court here to the said earl, by
his assent, to be levied of the goods and chattels which
were of the said *T. W.* at the time of his death in the
hands of the said *H. F.* to be administered ; if he had so
much in his hands to be administered ; and if he had not,
then the said damages to be levied of the proper goods
and chattels of the said *H. F.* and that the said *H. F.*
should then be in mercy, &c. as by the record and pro-
ceedings thereupon remaining in the court of our said
lord the king here may more fully appear : Which said
judgment so as aforesaid obtained, was also obtained for
a true and just debt, and still remaineth in its full force
and effect, no way reversed or annulled ; and the said
debt and damages still remain in arrear unpaid to the
said earl. And the said *H. F.* further saith, that the said
T. W. in his life-time, *to wit*, on the 4th day of *December*
in

in the 30th year of the reign of our said lord the present king, at *H.* aforesaid, accounted together with one *D. W.* gent. of divers sums of money before due and unpaid by the said *T. W.* to the said *D. W.* and upon that accounting the said *T. W.* in his life-time was found in arrearage to the said *D. W.* in 96l. of lawful money of *England*; and the said *T. W.* in his life-time afterwards satisfied the said *D. W.* 54l. 6s. and 8d. thereof, and 41l. 13s. and 4d. the residue of the said 96l. were a true and just debt of the said *T. W.* at the time of his death, and no ways paid or satisfied by the said *T. W.* to the said *D. W.* at the time of the death of the said *T. W.* Whereby the said *D. W.* after the death of the said *T. W.* (the same residue of the said debt not being satisfied) *to wit*, in the term of the *Holy Trinity* in the 33d year of the reign of our said lord the king, in the court of our said lord the king before Sir *Francis North*, knt. and his companions, then justices of our said lord the king of the bench here, *to wit*, at *W.* aforesaid, impleaded the said *H. F.* of and for the said 41l. 13s. 4d. residue of the said 96l. by the writ of our said lord the king of debt returnable and returned in the same court: In which said plea the said parties appearing in the same court, the said *D. W.* by *J. R.* his attorney said, that whereas the said *T. W.* in his life-time, *to wit*, on the said 4th day of *December* in the said 30th year of the reign of our said lord the present king, accounted together with the said *D. W.* of divers sums of money before due and unpaid by the said *T. W.* to the said *D. W.* and upon that accounting the said *T. W.* in his life-time was found in arrear to the said *D. W.* in 96l. of lawful money of *England*, whereby an action accrued to the said *D. W.* to demand and have of the said *T. W.* in his life-time the said 96l. and the said *T. W.* in his life-time afterwards satisfied to the said *D. W.* 54l. 6s. and 8d. thereof: Yet the said *T. W.* in his life-time, and the said *H. F.* after the death of the said *T. W.* although often requested, have not rendered, nor hath either of them rendered the said 41l. 13s. 4d. residue of the said 96l. to the said *D. W.* but they had to that time refused, and the said *H. F.* then refused to render the same to him, and unjustly detained: Wherefore he said that he was injured, and had damage to the value of 40l. And thereof he then brought suit, &c. And the said *H. F.* by *G. M.* his attorney came and defended the force and injury when, &c. and said that he was not informed by the said *H. F.* his master of any answer to be given in the said plaint for the said *H. F.* to the said *D. W.* and he said nothing else thereupon; whereby the said *D. W.* remained thereupon undefended against the said *H. F.*

Defendant impleaded thereon.

And judgment against him by Non sum informatus.

There-

Testator indebted on an
Insimul computasset.

Defendant
impleaded
thereon.

Therefore it was considered that the said *D. W.* should recover against the said *H. F.* his said debt, and his damages by the occasion of the detaining of that debt to 50s. adjudged by the court here to the said *D.* by his assent, to be levied of the goods and chattels which were of the said *T. W.* at the time of his death in the hands of the said *H. F.* to be administered, if he had so much thereof in his hands to be administered; and if he had not, then the said damages to be levied of the proper goods and chattels of the said *H. F.* and that the said *H. F.* should be in mercy, &c. as by the record and proceedings thereupon remaining in the same court of our said lord the king here more fully appeareth: Which said judgment so as aforesaid obtained, was also obtained for a true and just debt, and still remaineth in its full force and effect, no ways reversed or annulled, and the said debt and damages are still in arrear unpaid to the said *D. W.* And the said *H. F.* further saith that the said *T. W.* in his life-time, *to wit*, on the 2d day of November in the 32d year of the reign of our said lord Charles II. now king of England, &c. at the town of *H.* accounted together with one *H. A.* of divers sums of money before due and unpaid by the said *T. W.* to the said *H. A.* and upon that accounting the said *T. W.* in his lifetime was found in arrear to the said *H. A.* in 43*l.* 18*s.* and 4*d.* to be paid to the said *H. A.* when he should be thereunto afterwards requested; which said 43*l.* 18*s.* and 4*d.* so as aforesaid found in arrear upon the said accounting, were a true and just debt, and were no ways paid or satisfied by the said *T. W.* to the said *H. A.* at the time of the death of the said *T. W.* Whereby the said *H. A.* after the death of the said *T. W.* (the same debt not being satisfied) *to wit*, in Easter term in the 33d year of the reign of our said lord the present king, in the court of the said lord the king before Sir Francis North, knt. and his companions, then justices of our said lord the king of the bench here, *to wit*, at *W.* impleaded the said *H. F.* of and for the said 43*l.* 18*s.* 4*d.* by the writ of our said lord the king of debt returnable and returned in the same court: in which said plea the said parties appearing in the same court, the said *H. A.* by *J. R.* his attorney said, that whereas the said *T. W.* in his life-time, *to wit*, on the 2d day of November in the 32d year of the reign of our sovereign lord Charles the second, now king of England, &c. at the town of *H.* accounted together with the said *H. A.* of divers sums of money before due and unpaid by the said *T. W.* to the said *H. A.* and upon that accounting the said *T. W.* in his

his life-time was found in arrear to the said *H. A.* in the said 43l. 18s. and 4d. to be paid to the said *H.* when he should be afterwards thereunto requested; whereby an action accrued to the said *H. A.* to demand and have of the said *T. W.* in his life-time the said 43l. 18s. and 4d. yet the said *T. W.* in his life-time, and the said *H. F.* after the death of the said *T. W.* although often requested, had not rendered, nor had either of them rendered the said 43l. 18s. and 4d. to the said *H. A.* but they had to that time refused, and the said *H. F.* then refused to render the same to him, and unjustly detained: Whereupon he then said that he was injured, and had damage to the value of 40l. And thereof he then brought suit, &c. And the said *H. F.* by *G. M.* his attorney came and defended the force and injury when, &c. and the same attorney said that he was not informed by the said *H. F.* his master of any answer to be given in the said plaint for the said *H. F.* to the said *H. A.* and he said nothing else thereupon; whereby the said *H. A.* remained thereupon undefended against the said *H. F.* Therefore it was considered that the said *H. A.* should recover against the said *H. F.* his said debt, and his damages by occasion of the detaining that debt to 40s. adjudged by the court here to the said *H. A.* by his assent, to be levied of the goods and chattels which were of the said *T. W.* at the time of his death in the hands of the said *H. F.* to be administered, if he had so much thereof in his hands to be administered; and if he had not, then the said damages to be levied of the proper goods and chattels of the said *H. F.* and that the said *H. F.* should be in mercy, &c. as by the record and proceedings thereupon remaining in the said court of our said lord the king here more fully appeareth; which said judgment so as aforesaid obtained, was obtained for a true and just debt, and still remaineth in its full force and effect, no ways reversed or annulled, and the said debt and damages still remain in arrear unpaid to the said *H. A.* And the said *H. F.* further saith, that one *J. F.* gent. on the 20th day of *April* in the year of our Lord 1677, at *H.* aforesaid, demised to the said *T. W.* a close of land called the Back-yard with the appurtenances, adjoining to a certain messuage then in the occupation of the said *T. W.* within the parish of *St. Mary* in the town of *H.* aforesaid; To hold and occupy to the said *T. W.* from the feast of the Annunciation of the blessed Virgin *Mary* then last past, unto the end and term of ten years thence next ensuing, and fully to be complete and ended: Rendering therefore yearly during the said term to the

Judgment against him by Non sum informatus.

Rent due by testator on a lease.

Defendant
impleaded
thereon.

saïd J. F. and his assigns 5l. of lawful money of *England*, to be paid at the feasts of *St. Michael* the archangel and the Annunciation of the blessed Virgin *Mary*, by equal portions; by virtue of which demise the saïd T. W. in his life-time entered into the saïd close with the appurtenances, and was possessed thereof, and 5l. of the saïd rent was in arrear unpaid by the saïd T. W. to the saïd J. at the feast of *St. Michael* the archangel last past, for one whole year then ending; which saïd 5l. for the saïd rent so as aforesaid due, were his true and just debt, and which was no ways paid or satisfied by the saïd T. W. to the saïd J. at the time of the death of the saïd T. W. Whereby the saïd J. F. after the death of the saïd T. (the saïd debt not being satisfied) *to wit*, in the term of the *Holy Trinity* in the 33d year of the reign of our sovereign lord the present king, in the court of our saïd lord the king before Sir *Francis North*, knt. and his companions, then justices of our saïd lord the king of the bench here, *to wit*, at *W.* impleaded the saïd H. F. after the death of the saïd T. W. of and for the saïd 5l. then and yet unpaid, by the writ of our lord the king of debt returnable and returned in the same court: In which saïd plea the saïd parties appearing in the same court, the saïd J. F. by J. R. his attorney saïd, that whereas the saïd J. F. on the 20th day of *April* in the year of our Lord 1678, aforesaid, at *H.* aforesaid, had demised to the saïd T. W. one close of land called the Back-yard with the appurtenances, adjoining to a certain messuage then in the occupation of the saïd T. W. within the parish of *St. Mary* in *H.* To hold and occupy to the saïd T. W. from the feast of the Annunciation of the blessed Virgin *Mary* then last past, unto the end and term of ten years thence next ensuing, and fully to be complete and ended: Rendering therefore yearly during the saïd term, to the saïd J. F. and his assigns 5l. of lawful money of *England*, to be paid at the feasts of *St. Michael* the archangel and the Annunciation of the blessed Virgin *Mary*, by equal portions; by virtue of which saïd demise the saïd T. W. in his life-time entered into the saïd close with the appurtenances, and was possessed thereof, and 5l. of the saïd rent were in arrear unpaid by the saïd T. W. in his life-time to the saïd J. F. at the feast of *St. Michael* the archangel last past, for one whole year then ended; whereby an action accrued to the saïd J. F. to demand and have of the saïd T. W. in his life-time the saïd 5l. Yet the saïd T. W. in his life-time, and the saïd H. F. after the death of the saïd T. W. altho' often requested, had not then rendered, nor had either of them rendered the saïd 5l. to

5l. to the said J. F. but they had to that time refused, and the said H. F. then refused to render the same to him, and unjustly detained: Wherefore he said that he was injured, and had damage to the value of 40s. And thereof he then brought suit, &c. And the said H. F. by G. M. his attorney came and defended the force and injury when, &c. and the said attorney then said, that he was not informed by the said H. F. his master of any answer to be given in the said plaint for the said H. F. to the said J. F. and he said nothing else thereupon; whereby the said J. F. remained thereupon undefended against the said H. F. Therefore it was considered by the said court, that the said J. F. should recover against the said H. F. his said debt, and his damages by occasion of the detaining that debt, to 40s. adjudged by the court here to the said J. F. by his assent, to be levied of the goods and chattels which were of the said T. W. at the time of his death in the hands of the said H. F. to be administered, if he had so much thereof in his hands to be administered; and if he had not, then the said damages to be levied of the proper goods and chattels of the said H. F. and that the said H. F. should then be in mercy, &c. as by the record and proceedings thereon remaining in the said court of our said lord the king here more fully may appear. Which said judgment so as aforesaid obtained, was obtained for a true and just debt, and which still remaineth in its full force and effect, no ways reversed or annulled, and the said debt and damages still remain in arrear unpaid to the said J. F. And the said H. F. further saith, that the said T. W. in his life-time, *to wit*, on the 9th day of November in the 23d year of the reign of our said lord the now king, at H. aforesaid, was indebted to the said J. F. in 36l. 7s. and 3d. of lawful money of England, for divers wares and merchandizes of the said J. F. before that time bargained and sold to the said T. W. which said 36l. 7s. and 3d. were the true and just debt of the said T. W. at the time of his death, and were no ways paid or satisfied by the said T. W. to the said J. F. at the time of the death of the said T. W. Whereby the said J. F. after the death of the said T. (the same debt not being satisfied) *to wit*, in the term of the Holy Trinity in the 33d year of the reign of our sovereign lord the present king, in the court of our said lord the king before Sir Francis North, knt. and his companions, then justices of our said lord the king of the bench here, *to wit*, at W. aforesaid, impleaded the said H. F. of and for the said 36l. 7s. and 3d. by the writ of our said lord the king of debt returnable and returned

And judgment
against him by
non sum infor-
matus.

Testator in-
debted for
goods sold.

Defendant
impleaded
thereon.

And judgment
against him by
Non sum infor-
matus.

Testator in-
debted for
goods bought.

in the same court; in which said plea the said parties appearing in the same court, the said *J. F.* by *J. R.* his attorney said, that whereas the said *T. W.* in his life-time, *to wit*, on the 9th day of *November* in the 32d year of the reign of our sovereign lord the present king, at *H.* aforesaid, had bought of the said *J. F.* eighty-six dozen and five pounds of candles for 21l. and 10s. ten dozen of soap for 40s. and 3d. fourteen pounds of tobacco for 25s. [several other goods in like manner specified] to be paid to the said *J. F.* when he should be thereunto requested; which said several sums of money in the whole amount to 36l. 7s. and 3d. Yet the said *T. W.* in his life-time, and the said *H. F.* after the death of the said *T. W.* although often requested, had not then rendered, nor had either of them rendered the said 36l. 7s. and 3d. to the said *J. F.* but had to that time refused, and the said *H. F.* then refused to render the same to him, and unjustly detained: Wherefore he then said that he was injured, and had damage to the value of 40l. And thereof he then brought suit, &c. And the said *H. F.* by *G. M.* his attorney came and defended the force and injury, when, &c. and the said attorney then said, that he was not informed by the said *H. F.* his master of any answer to be given in the said plaint for the said *H. F.* to the said *J. F.* and he said nothing else thereupon; whereby the said *J. F.* remained thereupon undefended against the said *H. F.* Therefore it was considered by the said court, that the said *J. F.* should recover against the said *H. F.* his said debt and his damages by the occasion of the detaining that debt, to 40s. adjudged by the court here to the said *J. F.* by his assent, to be levied of the goods and chattels which were of the said *T. W.* at the time of his death in the hands of the said *H. F.* to be administered, if he had so much thereof in his hands to be administered; and if he had not, then the said damages to be levied of the proper goods and chattels of the said *H. F.* and that the said *H. F.* should be in mercy, &c. as by the record and proceedings thereon remaining in the same court of our said lord the king here more fully appeareth: Which said judgment, so as aforesaid obtained, was obtained for a true and just debt, and still remaineth in its full force and effect, no ways reversed or annulled; and the said debt and damages still remain in arrear unpaid to the said *J. F.* And the said *H. F.* further saith, that the said *T. W.* in his life-time, *to wit*, on the 30th day of *August* in the said 32d year of the reign of our sovereign lord the present king, at *H.* aforesaid, was indebted to one *W. A.* in 78l. of lawful money
of

of *England*, for divers wares and merchandizes of the said *W. A.* before that time bargained and sold to the said *T. W.* in his life-time; which said 78*l.* were the true and just debt of the said *T. W.* at the time of his death, and were no ways paid or satisfied by the said *T. W.* to the said *W. A.* at the time of the death of the said *T. W.* Whereby the said *W. A.* after the death of the said *T. W.* (the said debt not being satisfied) *to wit*, in the term of the *Holy Trinity* in the 33d year aforesaid, in the court of our said lord the king, before the king himself then being at *W.* aforesaid, impleaded the said *H. F.* of and for the said 78*l.* by his certain bill against the said *H. F.* in the custody of the marshal, &c. of a plea of debt, and there were then pledges of prosecuting, *to wit*, *J. D.* and *R. R.* by which said bill the said *W. A.* complained against the said *H. F.* executor of the testament of the said *T. W.* deceased, in the custody of the marshal of the *Marshalsea* of our lord the king, before the king himself, of a plea that he render to him 78*l.* of lawful money of *England*, which he unjustly detained from him, for that, *to wit*, that whereas the said *T. W.* in his life-time, *to wit*, on the 30th day of *August* in the 32d year of the reign of our sovereign lord *Charles II.* now king of *England*, &c. at *London* aforesaid, *to wit*, in the parish of *St. Mary le Bow* in the ward of *Cheap*, had bought of the said *W.* two pipes of *Canary* for 78*l.* to be paid to the said *W.* when he should be thereunto requested; yet the said *T.* in his life-time, and the said *H. F.* after the death of the said *T. W.* although often requested, had not, nor had either of them then paid the said 78*l.* to the said *W. A.* but had to that time refused, and the said *H. F.* then refused to pay him the same, to the damage of the said *W. A.* of 5*l.* And thereof he then brought suit, &c. And the said *H. F.* by *J. N.* then his attorney came and said, that he could not deny the said action of the said *W. A.* nor but that he detained from the said *W. A.* the said 78*l.* in the said declaration above mentioned, in manner and form as the said *W. A.* above declared against him: Therefore it was considered, that the said *W. A.* recover against the said *H.* his said debt, and his damages which he sustained, as well by occasion of the detaining that debt, as for his costs and charges by him about his suit in this behalf expended, adjudged to the said *W. A.* by his assent, to be levied of the goods and chattels which were of the said *T. W.* at the time of his death in the hands of the said *H. F.* to be administered, if he had then so much thereof in his hands; and if he had not so much thereof in his hands, then the said damages

Defendant impleaded thereon in B. R.

And judgment against him by Non potest deducere actionem.

Plene admini-
stravit præter,
&c.

Replication,
that one of the
writings obli-
gatory was
conditioned for
the payment of
a less sum at
a day yet to
come.

Demurrer,

damages to be levied of the proper goods and chattels of the said *H. F.* and that the said *H. F.* should be in mercy, &c. as by the record and proceedings thereon now remaining in the said court of our said lord the present king, before the king himself at *W.* aforesaid, more fully appeareth: Which said judgment so as aforesaid obtained, was also obtained for a true and just debt, and which still remaineth in its full force and effect, no ways reversed or annulled; and the debt and damages aforesaid are still in arrear unpaid to the said *W. A.* And the said *H. F.* further saith, that he hath fully administered all the goods and chattels which were of the said *T. W.* at the time of his death; and that he hath no goods or chattels which were of the said *T. W.* at the time of his death in his hands to be administered, nor had he on the day of suing out the original writ of the said *T. L. J. H.* and *E. C.* nor at any time afterwards, except goods and chattels to the value of 100s. which are bound and liable to the executions of the said several judgments, and to the payment of the said several sums by the said writings as aforesaid due and unpaid; And this he is ready to verify: Wherefore he prayeth judgment, if the said *T. L. J. H.* and *E. C.* ought to have their said action against him, &c.

And the said *T. L. J.* and *E.* say, that they by any thing before alledged ought not to be barred from having their said action, because they say that one writing obligatory of the said three writings obligatory of 40l. above pleaded in bar, made to the said *D. H.* by the said *T. W.* in his life-time as aforesaid, upon which judgment is not yet obtained by the said *D. to wit*, the writing obligatory of the three writings obligatory above secondly mentioned, was made and conditioned by a condition to the same writing obligatory subscribed, for the true and certain payment of the full and just sum of 20l. and 18s. of good and lawful money of *England*, to the said *D. H.* his executors, administrators or assigns, upon the 24th day of *June* then and now next ensuing, that then the said writing obligatory should be void; And this they are ready to verify: Wherefore they pray judgment, and their damages by occasion of the premisses to be adjudged to them.

And the said *H.* saith, that the plea by the said *T. J.* and *E.* in manner and form above pleaded by replying, and the matter therein contained, are not sufficient in law to maintain the action of the said *T. J.* and *E.* against the said *H. F.* To which the said *H. F.* hath no need, and is not bound by the law of the land in any manner

to

to answer; And this he is ready to verify: Wherefore, for default of a sufficient replication in this behalf, the said *H. F.* demurreth in law, and as before prayeth judgment, and that the said *T. L. J.* and *E.* may be barred from having their said action against him the said *H. F.* &c. And for causes of demurring in law upon the said plea, the said *H.* according to the form of the statute in such case lately made and provided declareth, and to the court here sheweth the following causes, *to wit*: For that the said *T. L. J.* and *E.* by their said replication have not answered any thing as to two writings obligatory of the said three writings obligatory above pleaded in bar, nor as to the said several judgments so as aforesaid pleaded in the said bar of the said *H. F.* as by the law of the land the said *T. J.* and *E.* ought by replying to have alledged; and also for that, that the said *T. L. J.* and *E.* by their said replication do not sufficiently answer to the said plea of the said *H.* nor do they confess and avoid, nor traverse or deny the matter in the bar of the said *H.* so as aforesaid pleaded; and also for that, that the said *T. J.* and *E.* by their said replication ought to have pleaded further in form following, or to the like effect, *to wit*, that the said *H. F.* on the day of suing out the said original writ of the said *T. J.* and *E.* had divers goods and chattels which were of the said *T. W.* at the time of his death in the hands of him the said *H. F.* to be administered, to the value of the said 200*l.* in the said declaration specified, besides goods and chattels which were liable and bound by the said executions of the said several judgments, and to the payment of the said 20*l.* and 18*s.* in the said condition of the said writing mentioned, and to the said several sums of money by said other writing as aforesaid due, so that the said *H.* might have joined issue thereupon in due form of law.

Causes of demurrer.

And the said *T. L. J.* and *E.* for that they have above alledged sufficient matter in law for them the said *T. L. J.* and *E.* to maintain their action against the said *H.* which they are ready to verify, which said matter the said *H.* doth not deny, nor any way answer thereto, but intirely refuseth to admit the verifying the same, as before, pray judgment, and their damages by occasion of the premisses to be adjudged to them, &c. And because the justices here would advise themselves of and upon the premisses before they give judgment thereon, a day is given to the said parties here until from the day of St. Michael in three weeks, to hear their judgment thereupon

Joinder in demurrer.

Continuance by Cur. adviser. vult.

Declaration in
case Sur aff.
on a feigned
issue touching
a Modus deci-
mandi.

upon, for that the said justices here are not yet,
&c. *

—— to wit, C. P. late of, &c. was attached to answer the right honourable D. lord H. of a plea of trespass upon the case: And whereupon the said D. lord H. by M. H. his attorney complaineth, Wherefore *whereas* on the 21st day of *December* in the 30th year of the reign of our lord the present king, at the parish of K. in the county aforesaid, a certain discourse was moved and had between the said D. lord H. and the said C. of and concerning three tenements of the said D. lord H. in the parish of K. aforesaid, with the lands thereunto respectively appertaining, formerly parcel of the possession of the late dissolved monastery of *Bellalanda*, otherwise *Eyland*, in the county aforesaid, to wit, one tenement with the appurtenances then in the possession of one J. R. another tenement with the appurtenances then in the possession of one R. M. and another tenement with the appurtenances called *Great Combe*, then in the possession of one C. B. Upon which said discourse the said D. lord H. asserted and affirmed, that the proprietors and tenants of the said tenement in the possession of the said J. R. from the time to the contrary whereof the memory of man is not, have paid and been used and bound to pay to the rector of the parish-church of K. aforesaid, for the time being, eight fleeces of wool, and 4s. of lawful money of *England*, yearly and every year, in lieu and compensation of all and all manner of tithes growing, increasing and renewing upon the same tenement, and the lands thereunto belonging, within the parish aforesaid; And that for the whole time aforesaid the proprietors and tenants of the said tenement in the possession of the said R. M. have paid, and been used and bound to pay to the rector of the parish-church of K. aforesaid, for the time being, 1s. 5d. of lawful money of *England*, yearly and every year, in lieu and compensation of all and all manner of tithes growing, increasing, and renewing upon the same tenement and the lands thereunto belonging, within the parish aforesaid; And also that all the proprietors and tenants of the said tenement called *Great Combe*, from the time to the contrary whereof the memory of man is not to the contrary, have paid, and been used and bound to pay to the rector of the parish-church of K. aforesaid, for the time being, ten fleeces of

* Judgment for the defendant, because the plaintiff did not say in his replication that the defendant had assets *ultra*, to pay the 20l. for, if he had not, he is not obliged to pay the plaintiff the debt upon contract before the debt upon bond due at a day yet to come. 3 *Lev.*
57 S. C.

of wool and two lambs, at the feast of St. *John* the Baptist, yearly and every year, in lieu and compensation of all and all manner of tithes growing, increasing, and renewing upon the same tenement, and the lands thereunto belonging, within the parish aforesaid: Which said several prescriptions and manners of tithing the said *C.* then and there denied, asserting that the tithes for the same tenements are and have been payable in kind.

Assumpsit.

And thereupon the said *C.* on the same 21st day of *December* in the 30th year aforesaid, at the parish of *K.* aforesaid, in consideration that the said *D. lord H.* at the special instance and request of the said *C.* had then and there paid to the said *C.* 50s. of lawful money of *England*, undertook and faithfully promised the said *D. lord H.* that if such prescription and manner of tithing concerning the said tenement in the possession of the said *J. R.* as the said *D. lord H.* then and there had asserted, was true, then he the said *C.* would well and truly pay 40s. of like lawful money to the said *D. lord H.* when afterwards he should be thereunto requested; and also, that if such prescription and manner of tithing concerning the said tenement in the possession of the said *R. M.* as the said *D. lord H.* then and there had asserted, was true, then he the said *C.* would well and truly pay other 40s. of like lawful money to the said *D. lord H.* when afterwards he should be thereunto requested: And further, that if such prescription and manner of tithing concerning the said tenement called *Great Combe*, as the said *D. lord H.* then and there had asserted, was true, then he the said *C.* would well and truly pay other 40s. of like lawful money to the said *D. lord H.* when afterwards he should be thereunto requested. And the said *D. lord H.* in fact

Averment.

saith, that at the time of the said discourse such respective prescriptions and manners of tithing concerning the several and respective tenements aforesaid, as were asserted by the said *D. lord H.* as aforesaid, were and still are true; whereof the said *C.* afterwards, *to wit*, on the last day of *December* in the 30th year aforesaid, at the parish of *K.* aforesaid, had notice: *Nevertheless* the said *C.* no ways regarding his said several promises and undertakings, but contriving and fraudulently intending to deceive and defraud the said *D. lord H.* in the premisses, hath not yet paid the said several sums, amounting in the whole to 6l. to the said *D. lord H.* (although the said *C.* on the 10th day of *January* in the 30th year aforesaid, and often afterwards, at the parish of *K.* aforesaid, was requested to pay the same); but he has hitherto intirely refused, and still doth refuse to pay him

Breach.

the same : Wherefore the said *D. lord H.* saith that he is injured, and hath damage to the value of 20*l.* And thereof he bringeth suit, &c.

Plea.

And the said *C.* by ——— his attorney cometh and defendeth the force and injury, when, &c. and saith that the said *D. lord H.* ought not to have his said action against him, because he saith, that well and true it is that he did undertake in manner and form as the said *D. lord H.* hath above declared against him ; but the said *C.* further saith, as to the first promise in the said declaration specified, that the tithes from time to time growing, increasing, and renewing upon the tenement in the possession of the said *J. R.* always have been paid, and ought to be paid in kind ; *Without this*, that the proprietors and tenants of the same tenements, from the time to the contrary whereof the memory of man is not, have been used and bound to pay to the rector of the parish-church of *K.* aforesaid, for the time being, eight fleeces of wool, and 4*s.* of lawful money of *England*, yearly and every year, in lieu and compensation of tithes, growing, increasing and renewing upon the same tenement and the lands thereunto belonging, within the said parish, as the said *D. lord H.* above in his said declaration has alledged : And this he is ready to verify. And as to the second promise, &c. [the plea to the second and third promises respectively as above, the traverse to each in the very words of the prescription.] Wherefore he prayeth judgment, if the said *D. lord H.* ought to have his said action against him, &c.

Replication.

And the said *D. lord H.* as to the plea of the said *C.* as to the first promise in the said declaration specified, saith that all the proprietors and tenants of the said tenement in the possession of the said *J. R.* from the time to, &c. [in the words of the prescription] in manner and form as the said *D. lord H.* in his said declaration hath alledged ; And of this he putteth himself upon the country : And the said *C.* doth so likewise, &c. And as to the said plea of the said *C.* as to the second promise in the said declaration specified, the said *D. lord H.* saith that [in the words of the prescription] in manner and form as the said *D. lord H.* in his said declaration hath alledged ; And of this he putteth himself upon the country : And the said *C.* doth so likewise, &c. And as to the said plea of the said *C.* as to the third promise in the said declaration specified, the said *D. lord H.* saith, that [in the words of the prescription] in manner and form as the said *D. lord H.* in his said declaration hath alledged :

alleged; and of this he putteth himself upon the country: And the said C. doth so likewise, &c.

— to wit, A. S. late of, &c. was attached to answer W. S. of a plea of trespass upon the case, &c. And whereupon the said W. by J. S. his attorney complaineth, that *whereas* H. S. brother of the said A. and W. now deceased, in his life-time, *to wit*, on the 9th day of *January* in the ——— year of, &c. was seised in his demesne as of fee, of and in a close called B. lying and being in the parish of G. in the county of Y. and the said H. being so seised thereof, and then languishing with a certain disease, declared that he the said H. then intended to convey to the said W. and his heirs for ever (the said W. then being the youngest brother of the said H.) the said close, unless the said A. would consent and promise to pay to the said W. 20l. of lawful money of *England*: Of which said intention of the said H. the said A. afterwards, *to wit*, on the same day and year, at D. aforesaid, having notice, the said A. then being brother and heir apparent of the said H. in consideration that the said H. at the special instance and request of the said A. would forbear to convey the said close to the said W. undertook, and then and there faithfully promised the said H. that he the said A. would well and truly pay to the said W. the sum of 20l. of lawful money of *England*, when after the death of the said H. he should be thereunto requested. And the said W. in fact saith, that the said H. trusting to the said promise and undertaking of the said A. did forbear to convey the said close to the said W. and afterwards, *to wit*, on the 15th day of *January* in the ——— year of, &c. at, &c. died without issue of his body begotten, whereby the said close descended to the said A. as brother and heir of the said H. And also whereas the said H. in his life-time, *to wit*, on the said 9th day of *January* in the ——— year of, &c. was seised in his demesne as of fee, of and in a certain other close in the parish of D. aforesaid, called B. and the said H. being so seised thereof, and then being in an ill state of health, the said H. on the said 9th day of *January* in the ——— year of, &c. for the mutual love and affection which he then had towards the said W. his youngest brother, appointed a certain deed to be written and prepared, to be executed by the said H. by which the said H. would convey and assure the said other close to the said W. and his heirs for ever, in reversion immediately after the death of the said H. the said A. having notice thereof, and then being brother and heir apparent of the said H. afterwards, *to wit*, on the said 9th day of *January*

Declaration in case Sur aff.
The defendant, in consideration his elder brother would not convey lands to his younger brother, promises to pay him 20l.

January in the ——— year of, &c. at the parish of *D.* aforesaid, in consideration that the said *W.* at the instance and request of the said *A.* would consent and agree to prevent and obstruct the making and writing the said deed so as aforesaid appointed to be written by the said *H.* undertook, and then and there faithfully promised the said *W.* that he the said *A.* would pay to the said *W.* other 20*l.* of lawful money of *England*, when after the death of the said *H.* he should be thereunto requested. And the said *W.* further in fact saith, that he the said *W.* trusting to the said promise and undertaking of the said *A.* prevented and obstructed the writing and making the said deed, *to wit*, at the parish of *D.* aforesaid; and afterwards, *to wit*, on the said 15th day of *January* in the ——— year of, &c. aforesaid, the said *H.* died at the said parish of *D.* without issue of his body begotten, whereby the said close descended to the said *A.* as brother and heir of the said *H.* Yet the said *A.* no ways regarding his said several promises and undertakings, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *W.* in the premisses, hath not paid the said several sums, which amount in the whole to the sum of 40*l.* or any part thereof, to the said *W.* (altho' after the death of the said *H.* *to wit*, on the ——— day of, &c. in the ——— year, &c. and often afterwards, at, &c. the said *A.* was thereunto requested by the said *W.*) but he hath hitherto intirely refused, and still doth refuse to pay him the same. Wherefore he saith he is injured, and hath damage to the value of 40*l.* And thereof he bringeth suit, &c.

Declaration in
case Sur. ass.
on a promise
of marriage.

———, *to wit*, *J. R.* late of, &c. was attached to answer *P. P.* spinster, of a plea of trespass on the case, &c. And whereupon the said *P.* by *J. S.* her attorney complaineth. Wherefore *whereas* on the 25th day of *March* in the 8th year of the reign of our sovereign lord *George III.* now king of *England*, &c. at the castle of *York* a certain discourse was moved and had between the said *P.* and *W. P.* her father, and the said *J.* and *R. R.* his father, of a marriage to be had and solemnized between the said *P.* and the said *J.* and upon that discourse it was then and there agreed between all the said parties, that the said marriage should be had and solemnized upon the *Sunday* next after the feast of *Easter*, being the second day of *April* next ensuing, [other agreements between the fathers for portions, &c. set forth.] the said *J.* after the said agreement so made, *to wit*, on the said 25th day of *March* in the year aforesaid, at the castle of *York* aforesaid, in consideration thereof, and also in consideration

that

that the said *P.* at the special instance and request of the said *J.* had then and there undertook, and faithfully promised the said *J.* that she the said *P.* would take the said *J.* for her husband, according to the said agreement, undertook, and then and there faithfully promised the said *P.* that he the said *J.* would marry the said *P.* according to the said agreement. And the said *P.* in fact saith, that she and the said *W.* her father were always ready and often offered to perform the said agreement in all things on their and each of their parts to be performed, according to the form and effect of the said agreement.

And also whereas the said *J.* on the 3d day of *April* in the 8th year aforesaid, at the said castle of *Y.* in consideration that the said *P.* then and still being unmarried, at the special instance and request of the said *J.* being then also unmarried, had then and there agreed with the said *J.* and undertook and faithfully promised the said *J.* that she the said *P.* would take the said *J.* for her husband, undertook, and then and there faithfully promised the said *P.* that he the said *J.* would marry the said *P.* Nevertheless the said *J.* no ways regarding his said several promises and undertakings, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *P.* in the premisses, did not marry the said *P.* (although on the 11th day of *April* in the 8th year aforesaid, and often before and afterwards, at the castle of *Y.* aforesaid, he was thereunto requested by the said *P.*) but the said *J.* afterwards, to wit, on the 2d day of *December* in the 8th year aforesaid, at the castle of *Y.* aforesaid, married one *A. L.* [an *Indeb. assumpsit*, for money lent, and an *Indeb. assumpsit* for money laid out.]

And the said *J.* by *L. R.* his attorney cometh and defendeth the force and injury when, &c. and saith that the said *P.* ought not to have her said action thereupon against him, because as to the first promise in the said declaration above supposed to be made, he saith, that after the time of the said promise and undertaking, and before the day of suing out the original writ of the said *P.* to wit, on the 30th day of *March* in the said 8th year of the reign of our said lord the present king, at the castle of *Y.* aforesaid, he the said *J.* requested the said *P.* that she would be ready to take the said *J.* for her husband, according to the form and effect of the said agreement; but the said *P.* then and there intirely refused to do the same, and she was not ready to marry the said *J.* on the said 2d day of *April* in the said declaration mentioned: Without this, that the said *J.* refused to marry the said *P.* according to the said agreement,

Laid over again.

Breach.

Other counts.

Plea.

As to first count, offered to marry plaintiff, but she refused.

Traverse.

as

To the second
count, the like.

As to the third
count. Non
assumpsit.

Issue.

As to the
fourth, Non as-
sumpsit, as to
part.

Issue.

As to the resi-
due, a tender.

Replication as
to the second
plea, did not
offer to marry
her.

Issue.

as the said *P.* has above declared against him; And this he is ready to verify. And as to the second promise in the said declaration above supposed to be made, he saith, that after the time of the said promise and undertaking, and before the day of suing out the original writ of the said *P. to wit*, on the 10th day of *April* in the 8th year aforesaid, at the castle of *T.* aforesaid, and often afterwards there, the said *J.* was ready and offered to the said *P.* to marry the said *P.* but the said *P.* then and there absolutely refused and denied to agree or consent thereto, and refused to take the said *J.* for her husband: And this he is ready to verify. And as to the said promise for the said 30l. above supposed to be made, the said *J.* saith, that he did not undertake in manner and form as the said *P.* has thereupon above declared against him; And of this he putteth himself upon the country: And the said *P.* doth so likewise. And as to 10l. parcel of the said 20l. in the said declaration mentioned, the said *J.* saith that he did not undertake in manner and form as the said *P.* hath above declared against him; And of this he putteth himself upon the country: And the said *P.* does so likewise. And as to 10l. residue of the said 20l. the said *J.* saith that the said *P.* ought not to have her said action thereupon against him, because he saith, that after the time of the promise for the said 20l. above supposed to be made, and before the suing out the said original writ of the said *P. to wit*, on the 10th day of *February* in the 9th year of the reign of our lord the present king, at the castle of *T.* aforesaid, the said *J.* offered to the said *P.* the said 10l. residue of the said 20l. which said 10l. the said *P.* intirely refused to receive: And the said *J.* further saith, that he at all times afterwards hitherto was and still is ready to pay to the said *P.* the said 10l. and hath brought the same here into court ready to be paid to the said *P.* if she the said *P.* is willing to receive the same; And this he is ready to verify: Wherefore he prayeth judgment if the said *P.* ought to have her said action thereupon against him, &c.

And the said *P.* as to the said plea of the said *J.* as to his second promise and undertaking above pleaded in bar, saith, that by any thing therein contained she ought not to be barred from having her said action against the said *J.* because she saith that the said *J.* after the time of the said promise and undertaking made, did not offer to the said *P.* to marry the said *P.* in manner as he in pleading hath above alledged; And this she prayeth may be inquired of by the country: And the

the said *J.* doth so likewise, &c. And as to the said plea of the said *J.* above pleaded in bar to his said first promise and undertaking, the said *P.* saith, that the said plea and the matter therein contained are not sufficient in law to bar the said *P.* from having her said action against him; and that she hath no need, and is not by the law of the land bound to answer to the said plea in manner and form aforesaid pleaded. And for cause of demurring in law upon the said plea, the said *P.* according to the form of the statute in such case made and provided, sheweth to the court here the cause following, *to wit*, that the traverse in the said plea contained is immaterial and superfluous, and thereby a matter not traversable, which is not alledged in the said declaration, is traversed; And this she is ready to verify: Wherefore for default of a sufficient plea of the said *J.* in this behalf, the said *P.* prayeth judgment, and her damages by occasion of the not performing the said promise and undertaking, to be adjudged to her. And as to the said plea of the said *J.* as to the said 10l. parcel of the said 20l. in the said declaration mentioned, supposed as aforesaid to be tendered by the said *J.* the said *P.* saith that the said *J.* ought not to be admitted to say that he was at all times hitherto ready to pay the said 10l. to the said *P.* because she saith, that she the said *P.* heretofore, *to wit*, in *Easter* term last past, in the court here declared in the plea aforesaid against the said *J.* in manner and form aforesaid. And thereupon the said *J.* in the same *Easter* term, by his said attorney came and defended the wrong and injury, when, &c. and saving to himself all and all manner of advantages, exceptions and allegations whatsoever, as well to the said writ as to the said declaration, prayed leave thereupon to imparl here until on this day, *to wit*, on the morrow of the *Holy Trinity* thence next ensuing, and had it, &c. The same day was given to the said *P.* here, &c. as it sufficiently appears of record in the said court of our said lord the king here; And this she is ready to verify by the said record: Wherefore she prayeth judgment, if the said *J.* ought to be admitted to say that he was at all times hitherto ready to pay the said 10l. to the said *P.* &c.

And the said *J.* for that he hath above pleaded sufficient matter to bar the said *P.* from having her said action against him as to the first promise in the said declaration above-mentioned, which he is ready to verify, which said matter the said *P.* doth not deny, and hath not any ways answered the same, prayeth judgment, and

A demurrer to the first plea.

Cause of demurrer.

Replication as to the tender, estoppel that it was pleaded after imparlance.

Joinder in demurrer.

and that the said *P.* may be barred from having her said action as to the said promise against him, &c. And further, the said *J.* for that he hath above alledged sufficient matter in law to bar the said *P.* from having her said action against him for the said 10*l.* residue of the said 20*l.* in the said declaration specified, and is ready to verify the same, which said matter the said *P.* doth not deny, and hath not any ways answered thereto, but intirely refuseth to admit the verifying the same, prayeth judgment, and that the said *P.* may be barred from having her said action against him for the said 10*l.* &c.

Declaration by an administratrix in case Sur ass to pay costs in chancery, in consideration that the intestate forbore to prosecute contempts, and gave day of payment.

Yorkshire, to wit, *J. C.* late of, &c. was attached to answer *J. P.* administratrix of all and singular the goods and chattels which were of *W. P.* gent. at the time of his death, *who died intestate*, of a plea of trespass on the case, &c. And whereupon the said *J.* by *A. M.* her attorney complaineth, that *whereas* the said *J.* in the life-time of the said *W.* to wit, on the ——— day of, &c. intending to exhibit his bill of complaint in the high court of chancery of our lord the present king against the said *W.* sued out of the said court of chancery, the said court then being at *W.* in the county of *M.* a certain writ of our said lord the king of *Subpœna*, directed to the said *W.* by which said writ our said lord the king commanded the said *W.* that the said *W.* under the penalty of 100*l.* should be in the said court of chancery on the ——— day of, &c. next ensuing, to answer to those things which then and there should be objected against him the said *W.* Which said writ afterwards, and before the return thereof, *to wit*, on the ——— day of, &c. at, &c. the said *J.* caused to be delivered to the said *W.* and the said *W.* at the return of the said writ appeared in the said court of Chancery, according to the command of the said writ: And afterwards such proceedings were in the same court, that 23*l.* were adjudged by the said court of Chancery to the said *W.* against the said *J.* for his costs, charges and expences, by reason and occasion of the unjust vexation of the said *J.* had and sustained by the said *W.* in the said court, as by the records and memorandums of the same, remaining at *W.* in the county of *M.* more fully appeareth. For obtaining which said 23*l.* the said *W.* afterwards, *to wit*, on the ——— day of, &c. sued forth out of the same court of Chancery, the said court then being at *W.* in the county of *M.* aforesaid, a certain writ of our said lord the king of *Subpœna* directed to the said *J.* by which said writ our said lord the king

firmly

firmly injoining, commanded the said *J.* that he the said *J.* immediately after the receipt of the said writ, should pay, or cause to be paid to the said *W.* or to the bearer of the said writ, the said 23l. and that the said *J.* should in no wise omit this, under the penalty of 100l. Which said writ of *Subpœna* last mentioned, the said *W.* afterwards, *to wit*, on the — day of, &c. delivered to *A. B.* then and still one of the attornies of our lord the king of the bench here, and then the said *W.*'s solicitor in the said suit in Chancery, to the intent that the said *A. B.* should demand and receive of the said *J.* the said 23l. to the use of the said *W.* And afterwards the said *A.* in the life-time of the said *W.* *to wit*, on the same day and year last aforesaid, at, &c. shewed to the said *J.* the said last mentioned writ of *Subpœna*, directed to the said *J.* as aforesaid, and then and there demanded of the said *J.* the said 23l. according to the tenor of the said writ. And thereupon the said *J.* on the same day and year, at, &c. in consideration that the said *A.* at the special instance and request of the said *J.* would stay one week for the said 23l. and would not sue forth any writ of attachment out of the said court of Chancery against the said *J.* for not paying the said 23l. upon the demand aforesaid, undertook, and then and there faithfully promised the said *A. B.* that he the said *J.* would well and truly pay the said 23l. to the said *W.* when he the said *J.* after the end of the said week then next ensuing should be thereunto requested. And the said *J.* in fact saith, that the said *W.* and *A. B.* trusting to the said promise and undertaking of the said *J.* did stay one week from thence next ensuing for the said 23l. and did not sue forth, nor did either of them sue forth at any time any writ of attachment against the said *J.* for or concerning the said 23l. or the non-payment thereof: [*Indeb. ass.* for 20l.] Yet the said *J.* not regarding his several promises and undertakings aforesaid, but contriving and fraudulently intending to deceive and defraud the said *W.* in his life-time, and the said *J.* after the death of the said *W.* hath not paid the said several sums of money, amounting in the whole to, &c. either to the said *W.* in his life-time, or to the said *J.* after the death of the said *W.* (to which *J.* administration of all and singular the goods and chattels, rights and credits which were of the said *W.* at the time of his death, after the death of the said *W.* *to wit*, on the — day of, &c. at, &c. by, &c. was in due manner committed) but intirely refused to pay the same to the said *W.* in his life-time, and to the said *J.*

Assumpsit.

Averment consideration performed.

Breach.

Administration committed.

Profert.

after the death of the said *W.* and still refuseth to pay the same to the said *J.* although the said *J.* was thereunto requested by the said *W.* in his life-time, and by the said *J.* after the death of the said *W.* to wit, on the ——— day of, &c. at, &c. Wherefore she saith she is injured, and hath damage to the value of 40l. And thereof she bringeth suit, &c. And she bringeth here into court the said letters of administration, which testify the committing the said administration in form aforesaid, &c.

Declaration in
case Sur assump-
sit to perform
an award.

——— to wit, *A. B.* late of, &c. was attached to answer *C. D.* of a plea of trespass on the case, &c. And whereupon the said *C. D.* by ——— his attorney complaineth, wherefore *whereas* on the ——— day of, &c. at, &c. a certain suit was moved and depending between the said *A.* and *C.* concerning, &c. To compromise and determine which, as well the said *A.* as the said *C.* put themselves upon the arbitration of *E. F.* and *G. H.* arbitrators indifferently chosen between them to award, order and adjudge of and concerning the said suit, so that the award should be given in by parol or in writing under the hands and seals of the said *E.* and *G.* before the ——— day of, &c. and if the said arbitrators should refuse or omit to make any award, order or judgment concerning the premisses by the time aforesaid, then upon the arbitration of *J. K.* an umpire indifferently chosen and named by the said *A.* and *C.* to award of and concerning the premisses, so that the umpirage should be given by parol or in writing under the hand and seal of the said *J. K.* before the ——— day of, &c. In consideration whereof, and in consideration that the said *C.* on the said ——— day of, &c. at, &c. aforesaid, at the special instance and request of the said *A.* had undertaken and promised to the said *A.* to pay to the said *A.* 20l. of lawful money of *England*, if he the said *C.* should not perform and fulfil the award of the said arbitrators, or of the said *J.* to be made of and upon the premisses in form aforesaid, in all things on his part to be performed and fulfilled, the said *A.* undertook, and on the said ——— day of, &c. at, &c. aforesaid, faithfully promised the said *C.* that if he the said *A.* should not perform the award or umpirage aforesaid, to be made in form aforesaid of and upon the premisses, in all things on his part to be performed and fulfilled, then he the said *A.* would pay 20l. of lawful money of *England* to the said *C.* when he should be thereunto afterwards requested. And the said *C.* in fact saith, that the

the said arbitrators omitted to make any award of and upon the premisses before the said — day of, &c. and that the said *J.* in default thereof, having taken upon him the burthen of the said arbitrament, before the said — day of, &c. *to wit*, on the — day of, &c. at, &c. awarded, ordered and adjudged of and upon the said premisses in form following, *to wit*, that the said *A.* should pay 10*l.* to the said *C.* on the — day of, &c. in full discharge of, &c. in or at the dwelling-house of one *L. M.* in *D.* aforesaid. And the said *C.* further in fact saith, that he the said *C.* was ready on the said — day of, &c. at the dwelling-house of the said *L. M.* to receive the said 10*l.* according to the form and effect of the said award; but the said *A.* not regarding the said award, did not pay the said 10*l.* to the said *C.* on the said — day of, &c. or at any time afterwards; by reason whereof the said *A.* ought to have paid the said 20*l.* to the said *C.* according to his said promise and undertaking: *Nevertheless* the said *A.* no ways regarding his said promise and undertaking, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *C.* in this case, hath not paid the said 20*l.* to the said *C.* (although the said *A.* afterwards, *to wit*, on the — day of, &c. and often afterwards, at, &c. aforesaid, was requested to pay the same by the said *C.*) but he hath hitherto refused, and still doth refuse to pay him the same: Wherefore he says he is injured, and has damage to the value of 30*l.* And thereof he bringeth suit, &c.

Cornwal, to wit, *R. P.* late of, &c. was attached to answer *E. C.* of a plea of trespass on the case: And *whereupon* the said *E.* by *J. W.* his attorney complaineth, *that whereas* on the 1st day of *October* in the year of our Lord 1775, and always afterwards, he the said *E.* was and still is possessed of and in a certain ancient messuage with the appurtenances, situate, lying and being at *P.* aforesaid in the county aforesaid, in which said messuage now are, and for the whole time aforesaid and before were certain windows on the west part thereof, through which said windows he the said *E.* (until the obstructions and damage hereafter mentioned) of right ought to have and enjoy the chearful light and wholesome air which by and thro' the said windows entered and were conveyed into the said messuage, and also the use of the said messuage, without any obstruction, hindrance or damage, to the great benefit and advantage of him the said *E.* Yet the said *R.* not ignorant of the premisses, but contriving and fraudulently and ma-

Declaration in case, for building so near the plaintiff's windows as to deprive him of the light.

liciously intending in this behalf unlawfully to oppress him the said *E.* and to spoil and deprive him of the use and benefit of his said windows, and of his said messuage, the said *R.* afterwards, *to wit*, the said 1st day of *October* in the said year of our Lord 1735, and from that day to the 21st day of *May* in the year of our Lord 1777, at *P.* aforesaid in the county aforesaid, certain walls and other buildings lately erected and built so near to the said messuage, unlawfully and injuriously, and to the nuisance of the said messuage of the said *E.* continued, that by reason thereof not only the said windows of him the said *E.* were greatly darkened, obscured and obstructed, but also the rain-waters descending from the said buildings greatly damaged and spoiled the said messuage of the said *E.* by which he the said *E.* during all the time aforesaid lost and was deprived of the use and benefit of the light and air which would have entered and been conveyed into his said messuage by and through the windows aforesaid, if the said walls and buildings had not continued as aforesaid, but also the benefit, use and advantage of his said messuage, to the damage of him the said *E.* of 200*l.* And thereof he bringeth this suit, &c.

Declaration in case at the suit of an attorney, for digging a trench in a street, wherein plaintiff fell and broke his leg.

— *to wit*, *R. M.* late of, &c. was attached by the writ of our lord the king of privilege issuing out of the court here, to answer *T. P.* gent. one of the attornies of the court of our lord the king of the bench, of a plea of trespass on the case: And whereupon the said *T.* in his proper person complaineth, that *whereas* in the town of *N.* upon *T.* aforesaid there is, and from the time to the contrary whereof the memory of a man is not to the contrary, hath been a certain antient street called the *Side*, which said street is, and by the whole time aforesaid hath been the king's highway for all subjects of our lord the present king and his predecessors, kings and queens of *England*, to go, pass over and ride, in, by and through the said street, at their will and pleasure; Yet the said *R.* not ignorant of the premisses, on the — day of, &c. without any lawful warrant dug and made a trench in the said street cross great part of the said street, and did not take care to fill and stop up the same with earth; whereby the said *T.* being a subject of our said lord the present king, afterwards, *to wit*, on the — day of, &c. at the said town of *Newcastle upon Tyne*, in the night-time of the same day, not knowing of the said trench, riding upon his horse in and thro' the said street, fell with his horse into the said

said trench, and thereby the leg of the said *T.* was broken, and the said *T.* was greatly hurt and bruised; and also his said horse was greatly injured, to the damage of the said *T.* of 500*l.* And thereof he bringeth suit, &c.

Middlesex, to wit, *B. T.* late of the *Middle Temple*, *London*, esq; was attached to answer *T. S.* gent. executor of the testament and last will of *R. S.* esq; deceased, during the minority of *R. S.* son of the said *R. S.* esq; deceased, of a plea of trespass upon the case: And whereupon the said *T. S.* by *R. G.* his attorney complaineth, wherefore *whereas* the said *R. S.* in his lifetime heretofore, that is to say, in the term of *St. Michael* in the 29th year of the reign of the lord *Charles II.* late king of *England*, &c. in the court of the said late king, before the king himself, (the said court being at *W.* in the county of *M.* aforesaid) by the consideration of the said court had recovered against one *R. H.* a certain debt of 100*l.* and also 30*s.* for his damages, which he had sustained by occasion of the detaining that debt whereof he was convicted, as by the record thereof now remaining in the court of our lord the king at *W.* aforesaid, in full force and vigour, no ways reversed, annulled, or in any manner satisfied, more fully appeareth. *And whereas also* the said debt and damages being no ways paid or satisfied, and the said *R. H.* being further indebted to the said *R. S.* in the sum of 108*l.* of lawful money of *England*, for the rent of a certain messuage with the appurtenances, situate in the parish of *St. Martin's in the Fields* in the said county of *M.* then held by the said *R. H.* of the said *R. S.* for a certain term of years then unexpired, the said *R. S.* made his testament and last will in writing, and of his said testament constituted the said *T.* executor, and afterwards died; and the said *T.* in due form of law proved the said testament, and took upon him the burthen of the execution thereof. *And whereas* after the death of the said *R. S.* that is to say, in the term of *Easter* in the 32d year of the reign of the said lord the late king, in the said court of the said late king, before the himself here, that is to say, at *W.* aforesaid, it was considered by the same court, that he the said *T.* executor, should have his execution against the said *R. H.* for the debt and damages aforesaid, according to the force, form and effect of the said recovery, as by the record thereof remaining in the same court more fully appears. *And whereas also* at the said time of adjudging that execution, the said *R.* was possessed of and in divers goods and chattels

Declaration in case by an executor durante minoritate, for procuring *R. H.* who was indebted to the plaintiff's testator, to confess a fraudulent judgment, whereby plaintiff was defeated of recovering the debt. By original in *B. R.*

Carth. 3 S. C. Comb. 51. Plaintiff's testator recovered a judgment against *R. H.* for 101*l.* 10*s.* *R. H.* also indebted to testator in 108*l.* for rent.

Testator made his will, appointed plaintiff executor, and died.

Judgment for plaintiff on a *Sci. Fa.* brought on the said judgment.

R. H. possessed of divers goods and chattels.

Plaintiff intended to sue out a *Fi. Fa.* and also to sue for the rent.

Defendant fraudulently caused a judgment to be signed against the said *R. H.* at the suit of *M. W.*

When nothing due to him.

And the goods of *R. H.* to be taken in execution and delivered to defendant.

R. H. absconds, and cannot be arrested. Whereby has lost his said debts, &c.

Defurrer.

Joinder.

chattels to the value of 200*l.* then being in the said messuage, as of his own proper goods and chattels; And the said *T.* intended to sue out a writ of *Fi. Fa.* upon the said judgment to the sheriff of *Middlesex* aforesaid, to cause the said debt and damages to be made of the said goods and chattels, and also to prosecute at law the said *R. H.* for the said rent as aforesaid due and then being in arrear; the said *B.* well knowing the premises, and maliciously contriving, and with the said *R. H.* conspiring to deprive the said *T.* of his said several debts, to obtain the said goods and chattels to the proper use of the said *B.* the said *B.* afterwards unduly and fraudulently caused and procured a certain judgment to be signed in the said court of the said late king, before the king himself, against the said *R. H.* for 160*l.* of debt, at the suit of one *M. W.* and to be inrolled of record as of the term of the *Holy Trinity* in the 32d year aforesaid; When in truth and in fact the said *R. H.* was not indebted to the said *M.* in the said 160*l.* or any part thereof: And the said *B.* by pretext of a certain writ of the said late king of execution upon the said judgment, prosecuted out of the said court, and directed to the sheriff of the county of *M.* aforesaid, on the 18th day of *June* in the year of our Lord 1680, the said goods and chattels of the said *R. H.* out of the said messuage to be removed, and to the said *B.* to be delivered, then and there fraudulently caused and procured, and the said goods and chattels to places unknown to the said *T.* carried away, conveyed and converted to his own use: And the said *R. H.* to places to the said *T.* also unknown, has also escaped, and by any process of law from that time hitherto cannot be taken and arrested; Whereby the said *T.* hath wholly lost not only several sums of money expended by him in suing for the said debts, but also the said several debts, to the damage of the said *T.* of 500*l.* And thereof he bringeth suit, &c.

And the said *B.* by *B. K.* his attorney cometh and defendeth the force and injury when, &c. and saith, that the matter contained in the said writ and declaration are not sufficient in law for the said *T.* to have maintained his said action against the said *B.* To which said matter the said *B.* hath no need, nor is he bound by the law of the land to answer; And this he is ready to verify: Wherefore he prayeth judgment, if the said *T.* ought to maintain any action against the said *B.* in this case, &c.

And the said *T. S.* for that he hath above declared sufficient matter in law to maintain his said action against the

the said *B. T.* which he is ready to verify, which said matter the said *B.* doth not deny, nor in any manner answer thereto, but wholly refuseth to admit the verification thereof, prayeth judgment, and his damages by the occasion aforesaid, to be adjudged to him, &c. *But because* the court of our said lord the king now here is not yet advised of giving their judgment of and upon the premisses, day is thereupon given to the parties aforesaid, before our lord the king, from the day wheresoever, &c. to hear their judgment of and upon the premisses, for that the court of our said lord the king now here is not yet, &c.

Cur. advisar.
&c.

Judgment given for the plaintiff, and affirmed in parliament.

Middlesex, to wit, *T. B.* late of, &c. was attached to answer the right honourable *E. lord G.* baron of ———, one of the peers and great men of this realm, who sueth as well for our lord the king as for himself, in a plea of trespass upon the case, &c. *And* thereupon the said *G.* who as well, &c. by *H. H.* his attorney complaineth, that *whereas* the said lord *G.* on the 29th day of *October* in the 19th year of the reign of our said lord the king, and long before, was, and ever since hath been, and yet is one of the barons and peers of this realm, and for all the time aforesaid hath had and yet hath a seat and vote in the parliament of *Great Britain*, as one of the peers of this realm: Nevertheless the aforesaid *T.* contriving and maliciously designing, against the form of the statute in that case made and provided, to raise great scandal of and concerning the said lord *G.* whereby discords might arise between the said *G.* and other peers, and great men and other subjects of this realm, and to hurt, injure and impair the good name, credit, state, dignity and honour of the said lord *G.* on the said 29th day of *October* in the 19th year aforesaid, at *W.* in the said county of *M.* in a certain discourse which he the said *T.* then and there had of and concerning the said lord *G.* in the presence and hearing of divers of his majesty's faithful subjects, falsely and maliciously spoke, related, published, and with a loud voice declared of and concerning the said lord *G.* these false, scandalous and defamatory words here next following, that is to say, *He* (meaning the said lord *G.*) *is a worthless fellow, and a little great lord, and his word* (meaning the word of the said lord *G.*) *is not worth two-pence: He* (meaning again the said lord *G.*) *has honour, but uses none.* *And* the said *T.* out of his further malice contriving and maliciously designing, against the form

Declaration in
case Sur le
Stat. de Scand.
Mag.

of

of the said statute, to raise a great scandal of and concerning the said lord G. whereby discords might arise between the said lord G. and other peers and great men, and other subjects of this realm, and to hurt, injure and impair the good name, credit, state, dignity and honour of the said lord G. afterwards, that is to say, on the 23d day of *March* in the 19th year aforesaid, at *W.* aforesaid, in another discourse which he the said *T.* then and there had with one *T. C.* of and concerning the said lord G. in the presence and hearing of divers others of his majesty's faithful subjects, falsely and maliciously spoke, related, published, and with a loud voice declared of and concerning the said lord G. the false, scandalous and defamatory words here next following, that is to say, *He, &c.* And also the further false, scandalous and defamatory words here next following, *it is true, &c.* By reason of the speaking, relating, publishing and declaring of which said several false, scandalous and defamatory words, the said lord G. is hurt in his reputation, honour and dignity; and the said lord G. hath lost the grace, good opinion and estimation of his present majesty, and the peers of this realm; and divers rumours and scandals amongst the peers of this realm, by the occasion aforesaid, are raised and divulged, and discords thereupon by the occasion aforesaid are risen between the said lord G. and the peers and great men, and other subjects of this realm, and daily more and more are likely to arise, to the great disturbance of the public tranquillity of this realm, in contempt of his present majesty, and to the great scandal and detriment of the said lord G. and against the form of the statute, to the damage of the said lord G. who as well, &c. of 5000*l.* And thereof the said lord G. as well for our said lord the king as for himself bringeth this suit, &c.

Declaration in case for slanderous words spoken of a tradesman, charging the defendant with theft; special damage laid,

Middlesex, to wit, *J. C.* late of, &c. was attached to answer to *F. D.* in a plea of trespass upon the case, &c. And whereupon the said *F.* by *S. N.* his attorney complaineth, *That whereas* he the said *F.* is a good, true, pious, faithful and honest subject of this kingdom, and as a good, true, pious, faithful and honest subject of this kingdom, from the time of his nativity hitherto hath demeaned and behaved himself, and until the time of the speaking of the false and scandalous words first hereafter mentioned to have been spoken by the said *J.* was accounted, esteemed and reputed a person of good name, fame, condition, conversation and reputation, and as a faithful and honest subject of this kingdom he

the

the said *F. D.* always kept himself free and clear from theft, robbery, and all such enormous crimes; and by reason of his said good name, fame, condition, conversation and reputation, the said *F. D.* had obtained the love and good will of all his neighbours, and other faithful and honest subjects of this kingdom: *And whereas* he the said *F.* now useth and exerciseth, and for divers years now last past has used and exercised the trade of a carpenter, and thereby and by reason of his good name, credit and reputation therein, hath during the time aforesaid got and endeavoured to get his livelihood in support of himself and family: *Nevertheless* the said *J.* well knowing the premisses, but contriving and maliciously intending to deprive him the said *F.* of his good name, fame, credit, esteem and reputation aforesaid, and to bring him into scandal, reproach and displeasure, as well amongst all grave and venerable persons, as other faithful and honest subjects of this kingdom, and especially amongst his friends and customers, and to hinder him in the exercise of his said trade, and also to cause the said *F. D.* to be punished according to the laws and statutes of this kingdom made and provided against those who commit felonies and robberies, on the 11th day of *January* in the year of our Lord 1774, at *Uxbridge* in the said county, in a certain discourse which the said *J.* then and there had with divers subjects of this kingdom, of and concerning the said *F.* did falsely and maliciously, in the presence and hearing of those subjects, speak and utter of and concerning the said *F.* certain false, scandalous and defamatory words, *to wit*, *He* (meaning the said *T. D.*) *has broke open my brother T.'s scrutore, and robbed him* (meaning *T. C.* brother of him the said *J.*) *of 27 guineas and some half-pence.* And the said *J.* of his further malice prepened against the said *F.* afterwards, *to wit*, on the same day and year, at *U.* aforesaid, in a certain other discourse which the said *J.* then and there had with divers other subjects of this kingdom, of and concerning the said *F.* did falsely and maliciously, in the presence and hearing of those subjects, speak and utter of and concerning the said *F. D.* certain other false, scandalous and defamatory words, *to wit*, *The rogue* (meaning the said *F.*) *has robbed my house,* (meaning the dwelling-house of the said *J.*) *and broke open my brother's scrutore, and has took some money from him,* (meaning the aforesaid *T. C.* the said *J.*'s brother) *and I* (meaning again the said *J.*) *will swear it:* Whereas in truth the said *F.* is not guilty of any offence by the said several scandalous words laid to his

Special damage
laid.

his charge. By reason of which speaking of the said several false, scandalous and defamatory words, the said *F.* is greatly scandalized, hurt and injured in his good name, fame, credit, esteem and reputation afore said, and is greatly hurt and damnified in his said business, in so much that divers persons, *to wit*, *G. W.* and *J. G.* who were used and accustomed to employ the said *F.* in his said trade and business of a carpenter, by reason of speaking the said words, suspect him to be guilty of the crimes thereby laid to his charge, and have refused, and still do more and more refuse to employ him in his said business, or to have any dealings or concerns whatsoever with him; and the said *F.* is very much prejudiced and hindered in the exercise of his said trade, to the damage of the said *F.* 500*l.* And thereof he bringeth suit, &c.

Declaration in
case for scan-
dalous words
spoken of an
attorney, charg-
ing him with
perjury.

Leicester, to wit, *W. S.* late of *W.* in the county afore said, yeoman, was attached by the writ of our lord the king of privilege, issuing out of the court here, to answer *T. B.* Gent. one of the attornies of the court of our lord the king of the bench here, of a plea of trespass upon the case, &c. And whereupon the said *T.* in his proper person complaineth, wherefore *whereas* the said *T.* is a good, true and faithful subject of our lord the present king, and of good name, fame and condition, and from the time of his birth hitherto has behaved and demeaned himself as a good, true and faithful subject of our lord the present king, and for all that time has remained without any kind of falsity, perjury, or stain of any hurtful crime: And also whereas the said *T.* for divers years now last past, was and still is one of the attornies of the court of our lord the present king of the bench here, and has hitherto behaved and demeaned himself rightly and honestly according to his ability and skill in all causes of his clients, whose attorney the said *T.* has been in the said court here, and by reason of the faithful and honest exercise of his office of an attorney in the same court of the bench, and prosecuting the causes of his clients, justly and honestly, gained and acquired many fees and much profit for the support and maintenance of himself and his family, and was daily likely to gain more and more: *Nevertheless*, the said *W.* not ignorant of the premisses, but contriving and maliciously intending unjustly to injure the said *T.* and to hurt, take away and injure his good name, fame, credit, and esteem, and to bring the said *T.* into ignominy and infamy, as well amongst his neighbours as amongst all his clients, and to deprive the said *T.* of his gain and profit

profit which he might afterwards gain by reason of the honest exercise of his office of an attorney, on the 20th day of *February* in the 30th year of the reign of our said lord the present king, at the borough of *L.* having communication and discourse with divers subjects of our said lord the king, concerning the said *T.* and the exercise of his said office of an attorney, openly and publicly said, spoke and published those false, opprobrious and malicious words following, *to wit, He* (meaning the said *T.*) *is a perjured knave and a rogue, and I* (meaning himself the said *W.*) *will prove it.* By pretext of speaking and publishing of which said false, opprobrious and malicious words, the said *T.* is not only greatly hurt and injured in his good name, fame and reputation, amongst many honourable and venerable persons, and other subjects of our said lord the present king, whose attorney the said *T.* then and before was in the said court of the bench, but also the said *T.* lost divers sums of money which the said *T.* used to get and gain of his clients for the honest exercise of his said office of an attorney, and by that occasion divers of his clients and other persons with whom the said *T.* before that time used to converse, have intirely left the said *T.* Wherefore he saith that he is injured, and hath damage to the value of 100l. And thereof he bringeth suit, &c.

And the said *W.* by *F. S.* his attorney cometh and defendeth the force and injury when, &c. And as to the words (*And a rogue*) above specified in the declaration of the said *T.* the said *W.* saith, that he is not guilty of speaking and publishing the same, as the said *T.* above complaineth against him; And of this he putteth himself upon the country: And the said *T.* doth so likewise, &c. And as to the speaking and publishing the residue of the words expressed in the same declaration, the said *W.* saith that the said *T.* ought not to have his said action thereupon against him, because he saith, that long before the time of speaking and publishing those words, the said *W.* in the court of our lord the present king of the bench at *W.* in the county of *M.* and before the then justices of our said lord the king of the same court, impleaded one *F. C.* by the name of *F. C.* late of *H.* in the county aforesaid, weaver, for that the said *F.* with force and arms had broke and entered the said close of the said *W.* at *H.* aforesaid, and had broke and spoiled the gates of the said *W.* there lately erected, to the value of 40s. and had broke and spoiled a pump of the said *W.* there also lately being, to the value of 60s. and had taken and carried away the water of the said *W.* to the value of 10s.

there

Plea, as to part not guilty.

Issue.

As to the residue, justices.

A suit brought by defendant.

The declara-
tion.

Plea.

First issue.

there lately found, and had done other injuries to him, to the great damage of the said *W.* and against the peace of our lord the present king, &c. And whereupon the said *W.* by *J. M.* his attorney complained, that the said *F.* on the 20th day of *December* in the 21st year of the reign of our lord the present king, with force and arms, &c. had broke and entered the close of the said *W.* called *Home-yard*, at *H.* [the whole declaration recited.] And thereof he brought suit, &c. To which said suit the said *F.* by *J. C.* his attorney appeared in the same court of our said lord the king of the bench, before the justices of our said lord the king of the same court, and in the same court afterwards, *to wit*, in the term of the *Holy Trinity* next ensuing, by his said attorney came and defended the force and injury when, &c. And as to the whole trespasss aforesaid, except the breaking the close, and taking and carrying away the said water, said that he was in nothing guilty thereof, as the said *W.* above complained against him; And of that he put himself upon the country: And the said *W.* did so likewise, &c. And as to the said breaking the close, and taking and carrying away the said water, above supposed to be done, the said *F.* saith that the said *W.* ought not to have his said action thereupon against him, &c. because he said, that before the said time in which the said trespasss was above supposed to be done, *to wit*, on the 1st day of *December* in the 21st year aforesaid, and from that time until the said time, and at the said time in which, &c. there was a great drought and want of water in the town of *H.* aforesaid, and the said *W.* at the said time in which, &c. being a parishioner of the said town, and a neighbour to the said *F.* and being willing to supply the said *W.* in his wants with water from the said pump of the said *W.* gave the said *F.* licence to enter into the said close called *Home-yard*, and from the said pump to take and carry away the said water to his own use; by virtue of which licence the said *F.* at the said time in which, &c. entered into the said close of the said *W.* called *Home-yard*, and from the said pump took and carried away the said water, as it was lawful for him to do; which was the said trespasss, as to the breaking the said close, and taking and carrying away the said water, whereof the said *W.* then above complained against him; And this he was ready to verify: Wherefore he prayed judgment if the said *W.* ought to have his said action thereupon against him, &c. And the said *W.* as to the said plea of the said *F.* as to breaking the said close, and taking and carrying away the said water above pleaded

pleaded in bar, said that he ought not by any thing therein alledged to be barred from having his said action against the said *F.* because he said that he the said *W.* did not give to the said *F.* licence to enter into the said close, and to take and carry away the said water from the said pump to his own proper use, as the said *F.* had above in pleading alledged; And he prayed that this might be inquired of by the country: And the said *F.* did so likewise, &c. Therefore, as well to try the said issue as the said other issue joined between the said parties, the sheriff was commanded to cause to come before the said justices of our lord the king of the bench aforesaid, from the day of the *Holy Trinity* in three weeks, twelve, &c. By whom, &c. And who neither, &c. To take cognizance, &c. Because as well, &c. At which day the jury between the said parties in the plea aforesaid was thereupon respited between them until from the day of *St. Michael* in three weeks then next ensuing, unless the justices of our lord the present king assigned to take the assizes in the county aforesaid by form of the statute, &c. should first come on *Thursday* the 14th day of *July* then next ensuing, at the castle of *L.* in the county aforesaid, for default of the jurors, because none of them came. At which said *Thursday* the 14th of *July* in the 22d year aforesaid, at the castle of *L.* aforesaid, before Sir *T. T.* knt. and Sir *H. W.* knt. justices of our lord the king of the bench, and justices of our said lord the king assigned to take the assizes in the county of *L.* aforesaid, by the form of the statute, &c. came as well the said *W.* as the said *F.* by their attornies aforesaid; And the jurors of that jury, to wit, [naming them] being demanded, also came, and to speak the truth of the premisses were chosen, tried and sworn. Upon which the said *T. B.* being then and there produced as a witness on the behalf of the said *F.* for decrease of the damages of the said *W. S.* in the said second issue, and then and there before the justices and jury aforesaid, being charged and sworn upon the *Holy Evangelists* of God to give to the said jury true evidence concerning the said issue between the said parties, the said *T.* then and there upon his oath voluntarily, falsely and corruptly, to the said jury gave in evidence, deposed and swore, that all the town-wells in *H.* aforesaid, at the time the said trespass was done, were dried up; when in truth, at the time the said trespass was done, there were in *H.* aforesaid four town-wells, to wit, the conduit, the sweap-well, *Ward's* pump and *Worth's* pump, which then run with water, and were not dried up; whereby the said *T. B.* then and there committed

Second issue.
Venire awarded.

Nisi prius.

Trial.

Plaintiff produced as a witness, gave false evidence.

voluntary

voluntary perjury; and by reason thereof the said *W. S.* afterwards, *to wit*, on the 20th day of *February* in the 30th year of the reign of our lord the present king, at the borough of *L.* aforesaid, spoke and published of the said *T. B.* the said residue of the words in the declaration of the said *T.* specified, *to wit*, *He is a perjured knave, and I will prove it*, as he lawfully might; And this he is ready to verify: Wherefore he prayeth judgment, if the said *T.* ought to have his said action thereupon against him, &c.

Declaration in
case for a ma-
licious prosecu-
tion in indict-
ing plaintiff's
wife.

Middlesex, to wit, *W. M.* late of, &c. and *B.* his wife, were attached to answer to *J. S.* of a plea of trespass upon the case, &c. And whereupon the said *J.* by *J. J.* his attorney complaineth, that the said *B.* contriving, and maliciously and wickedly intending unjustly to grieve, oppress, weary and impoverish him the said *J.* and put him to great expence, without any reasonable cause, and of her mere malice conceived against the said *J.* and *M.* his wife, at his present majesty's general sessions of the peace held at *Hick's Hall* in *St. John's Street*, in and for the county of *Middlesex*, upon *Monday* the 28th day of *August* in the sixth year of his present majesty's reign, before *E. B.* esq; *T. R.* bart. *J. G.* gent. *J. C.* esq; and others their companions, his said majesty's justices assigned to keep the peace in the said county of *M.* and also to hear and determine divers felonies, trespasses and misdemeanors committed in the said county, falsely and maliciously caused and procured *M.* the wife of the said *J.* to be indicted by the name of *M.* the wife of *J. S.* late of the parish of *St. Paul Covent-Garden*, for that she the said *M.* [as in the indictment] crown and dignity: And the said indictment was so falsely and maliciously prosecuted, and caused to be prosecuted against the said *M.* by her the said *B.* and at her instigation until afterwards, *to wit*, at his said majesty's general sessions of the peace held at *H. H.* aforesaid, in and for the said county of *M.* upon *Monday* the 4th day of *December* in the said 6th year of his present majesty's reign, before *E. B. J. M. T. A.* esqrs. and others their companions, then his said majesty's justices assigned to keep the peace in the said county, and also to hear and determine divers felonies, trespasses, and other misdemeanors committed in the said county, she the said *M.* was duly acquitted of the premisses in the said indictment above imputed to her, by a jury of the county, and the judgment of the said court: By reason whereof he the said *J.* the same day and year last mentioned, and many times as well before as afterwards, at *W.* in the said

county

county of *M.* was forced to lay out divers sums of money in the defence of the said *M.* his wife in this behalf, and to undergo great trouble and labour about the same, to the damage of the said *J.* of 9l. 19s. And thereof he bringeth this suit, &c. And the said *J.* averreth, that the said *W. M.* named in the said declaration, and *W. M.* named in the said indictment, is one and the same person, and not any other or different person; and that the said *B.* named in the said declaration, and the said *B.* named in the said indictment, is one and the same person, and not any other or different person.

Averment of the identity of the parties.

Wilts. to wit, *E. D.* late of, &c. and *R. M.* late of, &c. were attached to answer to *J. G.* and *R. P.* assignees of the debts, goods and chattels of *S. L.* a bankrupt, according to the form of the statutes made concerning bankrupts, of a plea of trespass upon the case; And whereupon the said *J.* and *R.* by *S. S.* their attorney complain, That they the said *J.* and *R.* on the ——— day of ——— in the year of our Lord ——— at *B.* in the said county of *W.* were possessed of thirty broad cloths, of the value of 600l. as of their own proper goods and chattels) they being as aforesaid assignees of the debts, goods and chattels of the said bankrupt; And being thereof so possessed, they the said *J.* and *R.* the said thirty broad cloths out of their hands and possession casually lost and mislaid; which said thirty broad cloths afterwards, to wit, the day and year aforesaid, at *B.* aforesaid, came to the hands and possession of them the aforesaid *E.* and *R.* by finding; And though the aforesaid *E.* and *R.* knew the aforesaid cloths to be the proper goods and chattels of the aforesaid *J.* and *R.* and to them, as assignees of the debts, goods and chattels of the aforesaid *S. L.* the bankrupt, of right to belong and appertain: Yet they the aforesaid *E.* and *R.* contriving and fraudulently intending the aforesaid *J.* and *R.* of the aforesaid cloths to deceive and defraud, have not delivered the aforesaid cloths or any of them to the aforesaid *J.* and *R.* although they have by them been often requested to deliver the same: But they the aforesaid *E.* and *R.* afterwards, to wit, the day and year aforesaid, at *B.* aforesaid, to their own proper use did convert and dispose of the aforesaid cloths, to the damage of them the aforesaid *J.* and *R.* 600l. And thereof they bring suit, &c.

Declaration in case Sur trover by assignees of the effects of a bankrupt, upon their own possession.

Somersetshire, to wit, *E. A.* late of, &c. was attached to answer to *M. B.* widow, in a plea of trespass upon the case: And whereupon the said *M.* by *W. H.* her attorney

Declaration in case Sur trover for money.

ney

ney complaineth, *That* whereas the said *M.* on the 29th day of *February* in the year of our Lord 1736 at *M.* aforesaid was possessed of the monies following, *to wit*, six pieces of gold coin of this kingdom, commonly called *Jacobus's*, and twelve other pieces of another gold coin of this kingdom, commonly called *Carolus's*, of the value of 20l. and of other 20l. in monies, numbered as of her own proper monies; and being so possessed thereof, the said *M.* afterwards, *to wit*, on the same day and year, at *M.* aforesaid, casually lost the said monies out of her hands and possession; which said monies afterwards, *to wit*, at the same time and place, came to the hands and possession of the said *E.* by finding them: *Yet* the said *E.* knowing the said monies to be the proper monies of the said *M.* and to her of right to belong and appertain, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *M.* of the monies aforesaid, hath not yet delivered her the said monies, though often requested so to do: But the said *E.* afterwards, *to wit*, at the same time and place, converted and disposed of the same to her own use; Whereby the said *M.* saith she is prejudiced and damaged to the value of 50l. And thereof she bringeth suit, &c.

Declaration in
case Sur trover
against baron
and feme, for
trover by the
wife whilst sole.

London, to wit, *A. B.* late of, &c. and *E.* his wife, were attached to answer *C. D.* in a plea of trespass on the case, &c. And whereupon the said *C.* by *W. R.* his attorney complaineth, *That* whereas the said *C.* on the ——— day of ——— in the year of our Lord 1729, at *L.* aforesaid, in the parish of *St. Bride's* otherwise *Bridget*, in the ward of *Farrindon without*, was possessed of the goods and chattels following, namely, of one gold watch, &c. to the value of 200l. as of his own goods and chattels; and being so possessed thereof, the said *C.* afterwards, *to wit*, the same day and year last above mentioned, at *L.* aforesaid, in the parish and ward aforesaid, casually was deprived of and lost those goods and chattels out of his hands and possession; which said goods and chattels afterwards, *to wit*, the same day and year last above mentioned, at *L.* aforesaid, in the parish and ward aforesaid, by finding came to the hands and possession of the said *E.* whilst she was single and unmarried: *Yet* the said *E.* whilst she was single and unmarried, and the said *A.* and *E.* after the celebration of the marriage between them, knowing those goods and chattels to be the proper goods and chattels of him the said *C.* and of right to belong and appertain to him the said *C.* *Nevertheless*, contriving and fraudulently

fraudulently intending craftily and subtilly to deceive and defraud the said *C.* in this particular, hath not nor have (though often requested so to do) delivered those goods and chattels to the said *C.* but hath and have converted and disposed of those goods and chattels afterwards, *to wit*, the same day and year last above mentioned, at *L.* aforesaid, in the parish and ward aforesaid, to the proper use and advantage of her the said *E.* while she was single and unmarried, and to the proper use and advantage of them the said *A.* and *E.* after the celebration of their said marriage, namely, the _____ day of _____ in the year of our Lord 1775, at *L.* aforesaid, to the damage of the said *C.* 200*l.* And thereof he bringeth suit, &c.

Yorkshire, to wit, *J. H.* late of the parish of *N.* in the county aforesaid, Esq; was attached to answer *W. P.* Esq; of a plea of trespass upon the case. And whereupon the said *W.* by *T. L.* his attorney complaineth, that the said *J.* on the 14th day of *May* in the 32d year of the reign of our lord the present king, unjustly and maliciously broke, threw down and prostrated great part of a certain ancient dam in and upon the river *D.* in the parish aforesaid, and thereby for a great time, *to wit*, from the said 14th day of *May* in the thirty-second year aforesaid, until the feast of *St. Michael* the archangel then next ensuing diverted and hindred great part of the water of the said river from its antient and usual course to and towards a water corn-mill of the said *W.* situate upon the said river in the parish of *O. M.* whereby the said *W.* lost the benefit and profit of his said mill for the whole time aforesaid. Wherefore the said *W.* saith, that he is injured, and hath damage to the value of 100*l.* And thereof he bringeth suit, &c.

And the said *J.* by _____ his attorney cometh and defendeth the force and injury, &c. and saith, that the said *W.* ought not to have his said action thereupon against him, because he saith, that before the time of breaking, throwing down, and prostrating the said dam, *to wit*, on the first day of *May* in the 31st year of the reign of our lord the present king, he the said *J.* was seised in his demesne as of fee, of and in an antient water corn-mill in *N.* aforesaid, and also of and in six acres of land next adjoining on the part of the said mill, in which six acres of land the said dam in the said declaration of the said *W.* mentioned, from the time to the contrary whereof the memory of man is not, had been made for conveying and

Declaration in case for throwing down a dam and diverting a water course.

Carth. 84. S. C.

3 Lev. 133.

Skin. 65, 175.

Comb. 9.

1 Show. 64.

2 Show. 243.

249.

3 Mod. 48.

Plea, the dam was on defendant's freehold.

directing a water-course from the said river *D.* to the said antient mill, and for the whole time aforesaid was repaired and maintained by the said *J.* and other tenants for the time being of the said antient mill without the contribution of any other person whatsoever, or for any other use than for conveying a water-course from the said river for wheeling about by the fall of the said water, and turning the wheels of his said antient mill. And the said *J.* further saith, That the said antient mill on the said first day of *May* in the 31st year aforesaid was by accident intirely burnt and destroyed by fire. And because the said *J.* did not intend to rebuild the said antient mill, the said *J.* afterwards, *to wit*, on the said 14th day of *May* in the 32d year aforesaid, broke, threw down and prostrated great part of the said dam, being built in and upon the said six acres of land, the freehold of the said *J.* and disposed and converted the stones and lime coming therefrom to his own proper use, as it was lawful for him to do. Which is the same, &c. And this, &c.

Declaration in
case of selling
an unsound
horse, warrant-
ing him to be
found.

London, to wit, *O. J.* late of, &c. was attached to answer unto *J. S.* of a plea of trespass on the case, &c. And thereupon the said *J.* by *G. H.* his attorney complaineth, That *Whereas* the said *J.* on the 16th day of *July* in the year of our Lord 1735. at *London*, to wit, in the parish of *St. Mary le Bow* in the ward of *Cheap* bargained with the said *O.* to buy of the said *O.* a certain gelding of the said *O.*'s, and the said *O.* then and there well knowing the said gelding to be unsound, and labouring under and afflicted with a certain distemper called the *Glanders*, by warranting the said gelding to be found in all respects, then and there falsely and fraudulently bargained and sold the said gelding, as and for a gelding found in all respects, to the said *J.* for a large sum of money, *to wit*, for 5l. 5s. which said gelding was then and there unsound, and afflicted with and labouring under the same distemper called the *Glanders*, and so always afterwards there remained: And thus the said *O.* on the said 16th day of *July* in the year aforesaid, at *L.* aforesaid, in the parish and ward aforesaid, falsely and fraudulently deceived the said *J.* to the said *J.*'s damage of 20l. And thereof he bringeth suit, &c.

Hilary

Hilary term in the thirteenth year of the reign
of king George the third.

Kent, *W.* M. late of C. in the said county was
to wit, attached to answer to *F. R.* in a plea of Declaration for
trespass on the case, &c. and whereupon the said *F.* by words.
his attorney complains, That *whereas*
he the said *F.* is a good, true, pious, faithful and honest
subject of this kingdom, and as a good, true, pious,
faithful and honest subject of this kingdom hath hitherto
demeaned and behaved himself, and as a good, true,
pious, faithful and honest subject of this kingdom from
the time of his nativity until the speaking, uttering
and publishing of the scandalous, false, malicious and
defamatory words first herein after mentioned to be
spoken of the said *F.* was reputed and esteemed among
all faithful and honest subjects of this kingdom with
whom he dealt and conversed, and to whom he was
known, and never was guilty of theft, robbery, fraud,
or any such hurtful and odious crimes, nor until the
speaking, uttering and publishing of the false, scanda-
lous, malicious, and defamatory words herein after first
mentioned of the said *F.* was ever suspected to be guilty
of those crimes or any of them: And the said *F.* by
reason of his good name, fame and reputation aforesaid,
had obtained the love and good-will of all his neigh-
bours and other faithful and honest subjects of this king-
dom with whom he conversed and had dealings: *Never-*
theless he the said *W.* well knowing the premisses, but
contriving and maliciously and wickedly intending to
injure, defame and slander the said *F.* and to deprive
him of his good name, fame, credit and reputation
aforesaid, and bring him into scandal, contempt and
reproach as well among all his neighbours, and friends,
as other faithful and honest subjects of this kingdom,
and to cause him to be punished according to the
laws of this kingdom, made and provided against theft,
robbery, felony and fraud, on the eighteenth day of
March in the year of our Lord one thousand seven hun-
dred and thirty-eight at *Chatham* aforesaid, in a certain
discourse with the said *W.* then and there had with
divers subjects of this kingdom of and concerning the
said *F.* did falsely wickedly and maliciously speak,
utter and publish of and concerning the said *F.*
in the presence and hearing of those subjects, cer-
tain false, scandalous, malicious and defamatory
words, to wit, *He* (meaning the said *F.*) *is an old rogue,*
and

and has robbed me (meaning him the said *W.*); And the said *W.* of his further malice prepensed against the said *F.* afterwards, *to wit*, on the same day and year at *Chatham* aforesaid, in a certain other discourse which the said *W.* then and there had with divers other subjects of this kingdom of and concerning the said *F.* did falsely, wickedly and maliciously, and without any reasonable or probable cause whatsoever, publish and declare in the presence and hearing of those subjects, *that the said F. had robbed him*; by reason of the speaking, uttering and publishing which said several false, scandalous, malicious and defamatory words so spoken, uttered and published by the said *W.* of the said *F.* as aforesaid, and of the publishing of the said slander, he the said *F.* is greatly hurt, injured, prejudiced and damnified in his good name, fame, credit and reputation: And whereas he the said *F.* now is, and for divers years now last past has been a servant of our sovereign lord the king, and foreman of the king's yard at *Chatham* aforesaid, and has behaved himself well and honestly in his said office. Nevertheless the said *W.* well knowing the premisses, but contriving and maliciously intending to defame and injure the said *F.* and to deprive him of his said office, whilst he the said *F.* was in his said office of foreman of the king's yard at *Chatham* aforesaid, *to wit*, on the day and year aforesaid at *Chatham* aforesaid, in a certain discourse which the said *W.* then and there had with divers subjects of this kingdom of and concerning the said *F.* did falsely, wickedly and maliciously speak, utter and publish of and concerning the said *F.* and his behaviour in the execution of his said office, in the presence and hearing of those subjects, certain false, scandalous, malicious and defamatory words, *to wit*, *That his master R.* (meaning and pointing at the said *F.*) *that old villain and rascal, who is a good for-nothing old rascal, and not fit to be employed in the king's service*: And the said *W.* of his further malice prepensed against the said *F.* afterwards, *to wit*, on the same day and year at *Chatham* aforesaid, in a certain other discourse which the said *W.* then and there had with divers other subjects of this kingdom of and concerning the said *F.* and his behaviour in the execution of his said office, did falsely, wickedly and maliciously speak, utter and publish of and concerning the said *F.* and his behaviour in the execution of his said office, in the presence and hearing of those subjects, certain other false, scandalous, malicious and defamatory words, *to wit*, *He* (meaning the said *F.*) *is a good-for-nothing old rascal, and not fit to be employed in the king's*

king's service: And the said W. of his further malice prepened against the said F. afterwards, to wit, on the same day and year at Chatham aforesaid in a certain other discourse, which the said W. then and there had with divers other subjects of this kingdom, of and concerning the said F. and his behaviour in the execution of his said office, did falsely, wickedly and maliciously, and without any reasonable or probable cause whatsoever, publish and declare in the presence and hearing of those subjects, that the said F. cheated and defrauded his majesty in the execution of his said office; whereas the said F. is not thereof guilty; by reason of the speaking, uttering and publishing of which said several false, scandalous, malicious and defamatory words, 3dly and 4thly above-mentioned, so spoken, uttered and published by the said W. of the said F. and of the publishing the said slander lastly above mentioned, he the said F. is greatly hurt, prejudiced and injured in his good name, fame and reputation, to the damage of the said F. of two hundred pounds: And thereupon he brings suit, &c.

And the said W. by T. H. his attorney comes and defends the wrong and injury, when, &c. and saith that he is not guilty of the premisses as the said F. above in his declaration hath alledged against him: And of this he puts himself upon the country; and the said F. does so likewise: Therefore the sheriff is commanded that he cause to come here, on the octave of the purification of the blessed Mary, twelve good, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c.

Not guilty.

Venire award.

Hilary term in the fourteenth year of king George the third.

To the justices of our lord the king of the bench.

London, **R.** *B.* gent. one of the attornies of the court
to wit, of our lord the king, before the king
himself, by *J. S.* his attorney, complains of *B. S.* gent.
one of the attornies of the court of the said lord the
king of the bench here, present here in court in his
own proper person, in a plea of trespass on the
case; For that *whereas* as well by the king's royal dig-
nity, as by antient custom, from time whereof the
memory of man is not to the contrary, all and singular
the attornies of the said court of the said lord the king
before

Bill against an
attorney of the
C. B. at the suit
of an attorney
of the K. B.
for causing
plaintiff to be
arrested contra-
ry to this privi-
lege, &c. on a
Ca. ad respon-
dendum at the
defendant's suit,

before the king himself attending the same court, and prosecuting and defending suits therein for their clients, have not nor ought to be sued or impleaded elsewhere than in the said court of the said lord the king before the king himself (pleas of freehold only excepted): *And whereas* he the said *R.* now is, and for divers years now last past hath been, one of the attornies of the said court of the said lord the king before the king himself attending the said court, and prosecuting and defending suits therein for his clients: *Nevertheless* the said *B.* well knowing the premisses, but contriving and maliciously intending to injure and oppress the said *R.* contrary to the said custom and his said privilege, whilst he the said *R.* was one of the attornies of the said court of the said lord the king before the king himself as aforesaid, and whilst he the said *B.* was one of the attornies of the said court of the said lord the king of the bench here, *to wit*, on the fourth day of *August* in the fourteenth year of the reign of the said lord the king, did wrongfully and maliciously cause and procure the said *R.* to be arrested and held to special bail in *London* aforesaid by the then sheriffs of *London* aforesaid, by virtue of a writ of the said lord the king of *capias ad respondendum*, issuing out of the court of our said lord the king of the bench here, at the suit of the said *B.* and directed to the then sheriffs of *London* aforesaid, for the arresting of the said *R.* in a certain plea of trespass, and also in a certain plea of trespass upon the case upon promise, to the damage of the said *B.* of 30*l.* By reason whereof the said *R.* was imprisoned by the said sheriffs of *London* for a long time, *to wit*, for the space of twelve hours, for want of bail for his appearance to answer to the said *B.* in his pleas aforesaid, and was put unto and sustained great expences in and about procuring his discharge from his said imprisonment, to the damage of the said *R.* of forty pounds: And thereupon he prays relief, &c.

Pledges, &c.

On reference to Mr. *C.* by consent of both sides he awarded, that the defendant should pay plaintiff 10*l.* 10*s.* and proceedings to stay.

Michaelmas

Michaelmas term in the thirteenth^h year of
king George the third.

Suffex, *I. W.* late of — in the said county — was
to wit, attached to answer to *H. B.* esq; in a plea
of trespass on the case, &c. And whereupon the said *H.*
by his attorney complains, *That whereas* the said *J.* on
the twenty-fifth day of *March* in the year of our Lord
1739, at — afore said, did keep a dog, well know-
ing that the said dog was used and accustomed to bite
and worry sheep; which dog so kept by the said *J.* as
afore said, on the same day and year, at *Wivelsfield* afore-
said, did bite and worry divers sheep and lambs, *to wit,*
thirty sheep and thirty lambs of the said *H.* so that part
of those sheep and lambs of the said *H.* *to wit,* four
sheep and two lambs of the price of six pounds died
thereof, and the residue of those sheep and lambs were
very much injured, damaged and lessened in value:
And whereas the said *J.* on the said twenty-fifth day of
March in the year afore said, at *Wivelsfield*, did keep a
bitch, well knowing that the said bitch was used and
accustomed to bite and worry sheep; which said bitch
so kept by the said *J.* as afore said, and on the same day
and year, at *Wivelsfield* afore said, did bite and worry
divers other sheep and lambs, *to wit,* thirty other sheep,
and thirty other lambs of the said *H.* so that part of
those sheep and lambs of the said *H.* *to wit,* four sheep
and two lambs of the price of six pounds died thereof,
and the residue of those sheep and lambs were very
much lessened in value, to the damage of the said *H.* of
20*l.* And thereupon he brings suit, &c.

Declaration for
keeping a dog
that worried
the plaintiff's
sheep.

Hilary term in the eleventh year of king
George the third.

Suffex, *J. R.* late of — in the said county,
to wit. *J.* yeoman, was attached to answer *H. B.* the
younger, in a plea of trespass on the case, &c. and
whereupon the said *H.* by
his attorney complains, *That whereas* the
said *J.* on the first day of *October* in the year of our Lord
one thousand seven hundred and seventy, at *Chichester* in
the said county, in consideration that the said *H.* at the
special

Declaration in
case upon a spe-
cial promise to
sell wines deli-
vered to him by
the plaintiff, or
to return the
same, or be ac-
countable.

special instance and request of the said J. would deliver to the said J. a hoghead of wine of the said H. to be carried by the said J. from *Chichester* aforesaid to *Horsham* in the said county for hire and reward, to be therefore paid by the said H. to the said J. assumed upon himself, and then and there faithfully promised the said H. that he the said J. would sell and dispose of the said hoghead of wine at *Horsham* aforesaid for the benefit and profit of the said H. or would bring the same back to the said H. at *Chichester* aforesaid *gratis*, or else would be accountable for it to the said H. And whereas the said J. afterwards, *to wit*, on the day and year aforesaid at *Chichester* aforesaid, in consideration that the said H. at the like special instance and request of the said J. would deliver to the said J. another hoghead of wine of the said H. to be carried by the said J. from *Chichester* aforesaid to *Horsham* aforesaid for hire and reward, to be therefore paid by the said H. to the said J. assumed upon himself, and then and there faithfully promised the said H. that he the said J. would sell and dispose of the said hoghead of wine for the benefit and profit of the said H. or would bring back the same to the said H. at *Chichester* aforesaid *gratis*, or else would be accountable for it to the said H. and although the said H. giving credit to the said promises and assumptions so made by the said J. in form aforesaid, afterwards, *to wit*, the same day and year at *Chichester* aforesaid, delivered to the said J. the said two hogheads of wine of the said H. for the purpose aforesaid; and although the said J. afterwards, *to wit*, the same day and year, carried the said two hogheads of wine so delivered to him as aforesaid, from *Chichester* aforesaid, to *Horsham* aforesaid: *Nevertheless* the said J. not regarding his said several promises and assumptions made in form aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said H. in this respect, did not sell or dispose of the said two hogheads of wine, or either of them, for the benefit and profit of the said H. at *Horsham* aforesaid, or elsewhere; neither did the said J. bring back the said two hogheads of wine, or either of them, to the said H. at *Chichester* aforesaid, or elsewhere; neither has the said J. in any manner accounted with the said H. for the same, or any part thereof, (although he the said J. afterwards, *to wit*, on the first day of *November* in the said year of our Lord one thousand seven hundred and seventy, at *Chichester* aforesaid, was requested by the said H. to perform his said several promises and assumptions,) but the said J. has hitherto wholly refused,

Breach.

ed, and still doth refuse either to sell and dispose of the said hogsheads of wine, or either of them, for the profit and benefit of the said *H.* or to bring back the same to the said *H.* or in any manner to account with the said *H.* for the same: *And whereas* the said *J.* afterwards, *to wit*, on the said first day of *October* in the said year of our Lord one thousand seven hundred and seventy at *Chichester* aforesaid, in consideration that the said *H.* at the special instance and request of the said *J.* would deliver to the said *J.* another hogshead of wine of the said *H.* to be carried by him from thence to *Horsham* aforesaid for hire and reward, and there to be sold and merchandized by him the said *J.* for the benefit and profit of the said *H.* to be accounted for by the said *J.* when he should be thereunto afterwards requested, assumed upon himself, and then and there faithfully promised the said *H.* that he the said *J.* would sell the said last mentioned hogshead of wine at *Horsham* aforesaid for the benefit and profit of the said *H.* and would render an account thereof to the said *H.* when he should be thereunto afterwards requested: *And whereas* the said *J.* afterwards, *to wit*, the same day and year at *Chichester* aforesaid, in consideration that the said *H.* at the special instance and request of the said *J.* would deliver to the said *J.* another hogshead of wine of the said *H.* to be carried by him the said *J.* from thence to *Horsham* aforesaid for hire and reward, and to be sold and merchandized by him the said *J.* for the benefit and profit of the said *H.* to be accounted for by the said *J.* when he should be thereunto afterwards requested, assumed upon himself, and then and there faithfully promised the said *H.* that he the said *J.* would sell the said last mentioned hogshead of wine for the benefit and profit of the said *H.* and would render an account thereof to the said *H.* when he should be thereunto afterwards requested; and altho' the said *H.* giving credit to the two last mentioned promises and assumptions of the said *J.* so made in form aforesaid, afterwards, *to wit*, on the said first day of *October* in the year aforesaid at *Chichester* aforesaid, delivered to the said *J.* the said two last mentioned hogsheads of wine for the purpose aforesaid: *Nevertheless* the said *J.* not regarding his said two last mentioned promises and assumptions made in form aforesaid, but contriving and fraudulently intending craftily and subtilly to deceive and defraud the said *H.* in this respect, did not sell and merchandize the said two last mentioned hogsheads of wine, or either of them, for the benefit and profit

Special promise
to sell wine and
render account
thereof.

Breach.

of the said *H.* and account with the said *H.* for the same, or any part thereof, (altho' the said *J.* afterwards, to wit, the said first day of *November* in the year of our Lord one thousand seven hundred and seventy aforesaid, at *Chichester* aforesaid, was requested by the said *H.* so to do,) but has hitherto wholly refused, and still refuses to sell and merchandize the same for the benefit and profit of the said *H.* and to account with the said *H.* for the same, to the damage of the said *H.* of twenty pounds: And thereupon he brings suit, &c.

Plea,
Non assumpsit.

Issue.
Venire awarded.

And the said *J.* by his attorney cometh and defendeth the force and injury when, &c. and saith, he did not assume upon himself in manner and form as the said *H.* hath above complained against him; and of this he puts himself upon the country; and the said *H.* likewise: Therefore the sheriff is commanded, that he cause to come here twelve, &c. By whom, &c. And who are neither, &c. To acknowledge, &c. Because as well, &c.

Declaration in
case against a
practiser for
suing out a
writ against
the plaintiff, in
the name of
C. K. without
C. K.'s consent.

Middlesex, to wit, *H. E.* late of in the said county, gentleman, was attached to answer *P. S.* esq; in a plea of trespass, that the said *H. E.* contriving and maliciously intending unjustly to vex, disquiet and greatly injure the said *P.* on the 12th day of *February* in the term of *St. Hilary* in the tenth year of the reign of our sovereign lord the present king, prosecuted out of the court of our said lord the king of common bench at *W.* in the county of *M.* in the name of *C. K.* but without his assent, consent, agreement or notice, a certain writ of our said lord the king, of *Capias ad respondendum* against the said *P.* by the name of *P. S.* late of the *Middle Temple*, gent. directed to the sheriff of the said county of *M.* whereby it was commanded to him, that the said then sheriff should take the said *P.* if he should be found in his bailiwick, and him safely keep, so that he might have his body before the justices of our said lord the king at *W.* from the day of *Easter* in fifteen days then next ensuing, to answer the said *C. K.* on a certain plea of trespass on the case, upon promise in the same writ specified; and for not performing thereof, to the damage of the said *C. K.* of 20*l.* By pretext of which said writ the then sheriff of the said county of *M.* after the issuing the said writ, and before the return thereof, to wit, on the 8th day of *April* in the 11th year of the reign of our said lord the present king, at the parish of *St. Clement Dares* in the said county of *M.* at the prosecution and solicitation of the said *H.* and without the assent

or notice of the said C. took and arrested the said P. by his body; and thereupon the said H. without the assent or notice of the said C. greatly injured the said P. to the damage of the said P. of 200l. And thereof he bringeth suit, &c.

Challenge.

Suffolk, *AND* now at this day, that is to say, *Friday* the 27th day of *August* in the tenth year of the reign of the said king, at *Bury St. Edmund's* afore said, come the afore said A. in his proper person, and the said S. by his said attorney, and the jurors impanelled in this cause are demanded and came, and thereupon the afore said S. challengeth the array of the panel afore said, because he saith that the said panel was arrayed by the said A. now and at the time of the said arrayment made under sheriff of the said county of S. and deputy of J. C. esq; sheriff of the same county; And this the said S. is ready to verify: Wherefore he prayeth the judgment of this court thereupon, and that the said panel may be quashed, &c.

Challenge at Nisi prius to the array of the panel, because the plaintiff was under sheriff, and arrayed the panel.

Wm. Whitaker.

Covenant.

Middlesex, *G. F.* late of *Cavendish-Square* in the said county of M. esq; otherwise called the honourable *G. F.* esq; lieutenant-general of the island of *St. Christopher*, was summoned to answer to *T. B.* in a plea, that he keep with him the covenant made between them, according to the force, form and effect of certain articles of agreement thereof made between the said *T. B.* and

Declaration in covenant.

Profert.

and the said *G. F.* and *M. W.* and *J. A.* &c. And where-
upon the said *T. B.* by *R. B.* the younger his attorney saith,
that *whereas* by certain articles of agreement indented
and made at *W.* in the said county of *M.* on the 17th day
of *January* in the year of our Lord 1776, between the
said *T. B.* of *R.* in the county of *C.* miner, of the one
part, and the said *G. F. M. W.* and *J. A.* by the names
of the honourable *G. F.* esq; lieutenant-general of the
island of *St. Christopher's*, *M. W.* of the city of *Bristol*,
whitawer, and *J. A.* of the island of *Spanish Town*, sur-
geon, as well on behalf of themselves, as others their
co-partners and sharers of and in certain mines and mi-
neral works in the island of *Spanish Town* in the *British*
leeward *Carribee islands* in *America*, one part of which said
articles, sealed with the seal of the said *G. F.* the said
T. B. bringeth here into court, bearing date the same
day and year, the said *T. B.* for and in consideration of
the wages or salary therein mentioned, did covenant and
agree to and with the said *G. F. M. W.* and *J. A.* their
and each of their executors, administrators and assigns,
in manner following, *to wit*, That the said *T. B.* from
time to time, and at all times during the term of seven
years, to be, commence and be accounted from the time
of his the said *T. B.*'s arrival at the island of *Spanish*
Town aforesaid, should and would well and faithfully,
and to the utmost of his skill and judgment, work for
and serve the said *G. F. M. W.* and *J. A.* and other their
copartners, their and each of their executors, admini-
strators and assigns, as overseer and director in the sink-
ing and working their copper, and other mines and mi-
neral works, lying and being in the island of *Spanish*
Town aforesaid, or in any other the *British* leeward *Car-*
ribee islands aforesaid, and do and perform business relat-
ing to the said mines, and the produce thereof, as they
the said *G. F. M. W.* and *J. A.* and other their copart-
ners, any or either of them, should from time to time
direct and appoint: And also that he the said *T. B.* should
not nor would, without leave first had and obtained,
absent himself from the service aforesaid, nor voluntarily
nor negligently waste or destroy any the goods, wares or
materials of the said *G. F. M. W.* and *J. A.* and their
said copartners, but in and concerning all and singular
the said business and service aforesaid to be true and faith-
ful, and do and perform the same according to the best
of his knowledge, and to the utmost benefit and advan-
tage of the said *G. F. M. W.* and *J. A.* and their said co-
partners, their executors, administrators and assigns.
And in consideration of the premises, the said *G. F.*

M. W.

M. W. and *J. A.* jointly and severally for themselves and their said copartners, and their and each of their executors and administrators, did covenant, promise and agree, to and with the said *T. B.* his executors and administrators, by the said articles in manner following; that is to say, *That* they the said *G. F. M. W.* and *J. A.* and their copartners, some or one of them, or some or one of their executors or administrators, should and would pay unto the said *T. B.* his executors and administrators, for the first year of the said term before mentioned, the sum of 20*l.* of lawful *British* money, and for every other year of the said term of seven years the sum of 30*l.* of like lawful money, and so proportionably, as salary or wages for the work and service to be by him done and performed as aforesaid; *And* also pay and allow him 5*s.* per ton for every ton of copper which during the said term should be raised and dressed by the direction and assistance of him the said *T. B.* All which said wages and monies were to be paid and payable quarterly, by equal portions; *And* likewise find and provide him competent and sufficient meat, drink, washing and lodging, during the said term. *And* it was agreed by and between all and singular the said parties, that in case the said *G. F. M. W.* and *J. A.* and other their copartners, should be minded and desirous to determine and make void the said articles, at the expiration of one year from the commencement thereof, or at any time afterwards during the said term, and should give to the said *T. B.* one month's notice thereof in writing, then and after the expiration of such one month, the said term thereby contracted for, as well as the said articles, should cease and be void; any before contained to the contrary notwithstanding. *And* it was agreed by and between the said parties, that the said *G. F. M. W.* and *J. A.* their executors and administrators, some or one of them, should and would at their expence, costs and charges, find and provide a passage for the said *T. B.* to the said mines in *Spanish Town* aforesaid; and, if they dismissed him from their service before the expiration of the said term thereby contracted for, to return him back to *England* again expence-free; if he should chuse to return at the time of their so dismissing him, as in and by the said articles of agreement more fully appeareth. *And* although the said *T.* in pursuance of the said articles of agreement, afterwards, *to wit*, on the 21*st* day of *August* in the year of our Lord 1777, arrived at the said island of *Spanish Town* in foreign parts, and did there well and faithfully, and to the utmost of his skill and

First breach.

judg-

judgment, work for and serve the said *G. M.* and *J.* and their copartners, as overseer and director in the sinking and working their copper and other mines and mineral works lying and being in the island of *Spanish Town* aforesaid, and other the *British Caribbee islands* aforesaid, and did and performed business relating to the said mines and the produce thereof, as they the said *G. M.* and *J.* and other their copartners did from time to time direct and appoint, for a certain time, *to wit*, for the space of one year and a half then next following; by reason whereof a certain sum of money, *to wit*, the sum of 35*l.* of lawful money of *Great Britain*, became due and payable to the said *T.* for his salary and wages aforesaid: *Nevertheless* the said *G. M.* and *J.* or any of them, or their said copartners or any of them, did not pay to the said *T.* the said 35*l.* or any part thereof, but wholly neglected and refused to pay the same, and the said 35*l.* are still due and in arrear to the said *T.* And the said *T.* further saith, that the said *G. M.* and *J.* or any of them, or their said copartners or any of them, during the said service of the said *T.* or any part thereof, did not find and provide for him competent and sufficient meat, drink, washing and lodging, or any meat, drink, washing or lodging whatsoever, according to the form and effect of the said covenant of the said *G.* so made with the said *T.* in that respect as aforesaid, but neglected so to do, contrary to the form and effect of that covenant. And the said *T.* further saith, that during the said time that he the said *T.* was in the services aforesaid, thirteen tons of copper ore were raised and dressed in the said mines and mineral works in the said island of *Spanish Town*, by the direction and assistance of him the said *T.* by reason whereof 65*s.* of lawful money of *Great Britain* became due and payable to the said *T.* *to wit*, 5*s.* for each of those thirteen tons of ore: *Nevertheless* the said *G. M.* and *J.* did not nor did any of them pay to the said *T.* the said 65*s.* or any part thereof, according to the form and effect of the said covenant of the said *G.* so made with the said *T.* in that respect as aforesaid, but wholly neglected to pay the same, and still refuseth to pay the same to the said *T.* contrary to the form and effect of that covenant. And the said *T.* saith, that the said *G. M.* and *J.* did not, nor did any of them find and provide at their or any of their expence, costs and charges, a passage for the said *T.* to the said mines in *Spanish Town* aforesaid, according to the form and effect of the said covenant of the said *G.* so made with the said *T.* in that respect as aforesaid, but neglected so to do, contrary to the form and

Second breach.

Third breach.

Fourth breach.

and effect of that covenant. And the said T. further saith, that although the said G. M. and J. at the end of the said one year and an half dismissed the said T. from their said service in the island of *Spanish Town* aforesaid; and although he the said T. then and there upon his said dismissal gave notice to the said G. M. and J. that he was minded and willing to return back to *England*, and then and there requested them to return him back to *England*, expence-free, according to the form and effect of the said covenant of the said G. so made with the said T. in that respect as aforesaid: *Nevertheless* the said G. M. and J. did not, nor did any of them return the said T. back to *England* expence-free, according to the form and effect of the said covenant of the said G. M. and J. so made with the said T. in that respect as aforesaid, but neglected and refused so to do, contrary to the form and effect of that covenant: And so the said T. saith, that the said G. (although often requested) hath not kept with the said T. his said covenant so made with him the said T. in that respect as aforesaid, but hath broke it, and hath hitherto wholly denied and still denieth to keep the same with the said T. Whereby the said T. saith that he is injured, and hath damage to the value of 200*l*. And thereof he bringeth suit, &c.

Fifth breach.

And the said G. by J. S. his attorney cometh and defendeth the force and injury when, &c. and saith that the said T. ought not to have or maintain his action aforesaid against him; *Because*, as to the said breach of covenant by the said T. first above assigned, the said G. saith, that they the said G. M. and J. paid to the said T. all the salary and wages due to him from them, for the work and service by him done and performed, according to the form and effect of the said covenant in this behalf made, to wit, upon the 21st day of *February* in the year of our Lord 1740, at *W.* aforesaid: And of this he putteth himself upon the country. And as to the said breach of covenant secondly above assigned, the said G. saith, that the said G. M. and J. did, during all the time that the said T. continued in the said service, find and provide for him competent and sufficient meat, drink, washing and lodging, according to the form and effect of the said covenant in this behalf made: And of this the said G. putteth himself upon the country. And as to the said breach of covenant thirdly above assigned, the said G. saith, that the said G. M. and J. paid and allowed to the said T. 5*s.* per ton for every ton of copper ore which was raised and dressed in the said mines and mineral works in the said articles mentioned, by the direction and assistance

Plea.

As to the first breach.

As to the second breach.

As to the third breach.

As to the fourth
breach.

As to the fifth
breach.

sistance of the said *T.* according to the form and effect of the said covenant in this behalf made, *to wit*, upon the said 21st day of *February* in the said year 1740. at *W.* aforesaid: And of this he putteth himself upon the country. And as to the said breach of covenant fourthly above assigned, the said *G.* saith, that the said *G. M.* and *J.* did find and provide at their own expence, costs and charges, a passage for the said *T.* to the said mines in *Spanish Town* aforesaid, according to the form and effect of the said covenant in this behalf made, *to wit*, upon the 21st day of *May* in the said year of our Lord 1777. at *W.* aforesaid: And of this the said *G.* putteth himself upon the country. And as to the said breach of covenant lastly above assigned, the said *G.* saith, that the said *G. M.* and *J.* at the end of the said one year and an half did not dismis the said *T.* from their said service in the island of *Spanish Town* aforesaid, as the said *T.* hath by his said declaration above alledged: And of this also the said *G.* putteth himself upon the country.

Geo. Wilson.

Declaration in
covenant on a
lease for not re-
pairing, and for
committing
waste.
Hil. 11 G. 2.
ro. 1392.
Recital of lease.

Profert.

Demise.

Premises.

Herefordshire, to wit, *J. T.* late of the parish of *W.* in the said county, husbandman, was summoned to answer to *E. J.* and *M. J.* in a plea, that he keep with them the covenant between them made, according to the force, form and effect of a certain indenture thereof between them made, &c. And whereupon the said *E.* and *M.* by *R. M.* their attorney say, *That whereas* by a certain indenture made at the parish of *W.* aforesaid, on the 7th day of *February* in the year of our Lord 1772. between the said *E.* and *M.* by the names of *E. J.* and *M. J.* both of the parish of *W.* aforesaid in the county of *H.* aforesaid, spinsters, in trust and to the use of *J. J.* their nephew, being then under the age of twenty-one years, of the one part, and the said *J.* by the name of *J. T.* of the parish of *W.* aforesaid and county aforesaid, husbandman, of the other part, *The* counter part of which said indenture, sealed with the seal of the said *J.* the said *E.* and *M.* bring here into court, bearing date the same day and year, the said *E.* and *M.* for the consideration therein mentioned, demised, granted, set and to farm let, unto the said *J.* his executors, administrators and assigns, All that messuage or tenement wherein the said *J.* then dwelt, situate, lying and being at *L.* in the several parishes of *W.* and *G.* in the county of *H.* aforesaid, together with the out-houses, barns, stables, sheep-cotes, buildings, gardens and orchards, lands, arable, meadow and pasture, cop-pice of wood, known by the several names of *M.* and *T.*

(but

(but the fore parlour, and likewise one room or chamber in the said dwelling-house which was above the parlour, and also one part of the little garden wherein the stocks grew, were excepted and reserved to the use of the said *E.* and *M.* their heirs and assigns) together with all ways, waters, water-courses, easements, privileges, profits and appurtenances thereto belonging or in any wise appertaining, unto the said *J.* his executors, administrators and assigns; *To have and to hold* all and singular the said dwelling-house or tenement, out-houses, barns, stables, sheep-cotes, buildings, edifices, gardens and orchards, lands arable, meadow and pasture, with their and every of their appurtenances, as before in the said indenture mentioned to be demised to the aforesaid *J.* his executors, administrators and assigns, from the 2d day of *February* then last past, for and during and until the full end and term of four years, from thenceforth fully to be complete and ended: *Yielding and paying* therefore yearly and every year, during the aforesaid term, unto the said *E.* and *M.* their heirs and assigns, the yearly rent or sum of 56l. of lawful *English* money, to be paid at these two usual times of payment in the year, (that is to say) at and upon every 2d day of *February* and every 2d day of *August*, by even and equal parts or portions; the first payment to commence and take place at and upon the 2d day of *August* next ensuing the date of the said indenture. *And* it was by the said indenture covenanted and agreed upon by and between the said parties above-mentioned, that they the said *E.* and *M.* their heirs and assigns, should and would before the feast day of *St. Michael* the archangel next ensuing the date of the said indenture, at their own proper costs and charges well and sufficiently repair, amend and put the aforesaid premises, by the said indenture granted, in a good and tenantable repair: *And* he the said *J.* did for himself, his executors, administrators and assigns, covenant, promise and agree, to and with the said *E.* and *M.* their heirs and assigns, that he the said *J.* his executors, administrators and assigns, should and would from time to time, and at all times during the term by the said indenture granted, at his or their own proper costs and charges well and sufficiently repair, amend, maintain, sustain, uphold and keep all and singular the said demised premises, with their and every of their appurtenances, in so good and tenantable reparation and amendment: *And* that the said *J.* his executors, administrators and assigns, should not at any time during the said term commit, cause, procure or suffer to be committed or done any manner of wilful

Habendum.

Reddendum.

Covenants.

Defendant entered.

First breach.

Second breach.

Plea.

As to the first breach.

waste, spoil or destruction, in or upon the said demised premises, in cutting down any timber-trees, (except what were necessary for the use of the said premises) as by the said indenture more fully appeareth: *By virtue* of which demise the said *J.* entered into the said demised premises with the appurtenances, and was possessed thereof for and during the said four years to him granted as aforesaid, *to wit*, until and upon the 2d day of *February* in the year of our Lord 1776. *And* altho' the said *E.* and *M.* before the said feast of *St. Michael* the archangel next after the date of the said indenture, at their own proper costs and charges did well and sufficiently repair, amend and put the aforesaid premises by the said indenture granted in tenantable repair: *Nevertheless* the said *J.* from time to time, and at all times during the residue of the said term, did not well and sufficiently repair, amend, maintain, sustain, uphold and keep the said demised premises in so good and tenantable reparation and amendment, according to the form and effect of the said covenant of the said *J.* so made with the said *E.* and *M.* in that respect as aforesaid. *And* the said *E.* and *M.* further say, that the said *J.* during the said term, *to wit*, on the 1st day of *February* in the year of our Lord 1776, aforesaid, did wilfully commit waste, spoil and destruction, in and upon the said demised premises, in cutting down timber-trees, *to wit*, 20 oaks, 30 ashes, and 40 elms, growing in and upon the said demised premises, (other than what was necessary for the use of those premises) and taking, carrying away and detaining the timber thereof, contrary to the form and effect of his said covenant so made with the said *E.* and *M.* in that respect as aforesaid: *And* so the said *J.* (although often requested) hath not kept his said covenant so made as aforesaid with the said *E.* and *M.* but hath broke it, and has hitherto wholly denied, and still doth deny to keep the same with the said *E.* and *M.* Whereby the said *E.* and *M.* say that they are injured, and have damage to the value of 40*l.* *And* thereof they bring suit, &c.

And the said *J.* by *T. R.* his attorney cometh and defendeth the force and injury when, &c. and saith that the said *E.* and *M.* ought not to have their said action against him; because, *As to* the breach of covenant above supposed to be made in this, That altho' the said *E.* and *M.* before the said feast of *St. Michael* the archangel next after the date of the said indenture, at their own proper costs and charges, did well and sufficiently repair, amend and put the aforesaid premises, by the said indenture granted,

granted, in good and tenantable repair: *Nevertheless* the said *J.* from time to time, and at all times during the residue of the said term, did not well and sufficiently repair, amend, maintain, sustain, uphold and keep the said demised premisses in so good and tenantable reparation and amendment, according to the form and effect of the said covenant of the said *J.* so made with the said *E.* and *M.* in that respect as aforesaid, he the said *J.* saith, that the said *E.* and *M.* before the said feast-day of *St. Michael* the archangel next after the date of the said indenture, did not well and sufficiently repair, amend and put the aforesaid premisses by the said indenture granted in good and tenantable repair, as they the said *E.* and *M.* have by their said declaration above alledged: And hereupon he putteth himself upon the country: And the said *E.* and *M.* do so likewise. And as to the breach of covenant above supposed to be made in this, that the said *J.* did commit wilful waste, spoil and destruction in and upon the said demised premisses, in cutting down the said timber-trees, growing in and upon the said demised premisses, (other than what were necessary for the use of those premisses) and taking, carrying away, and detaining the timber thereof, contrary to the form and effect of the said covenant so made with the said *E.* and *M.* in that respect as aforesaid, the said *J.* saith, that he the said *J.* did not commit the said waste, spoil or destruction, in manner and form as the said *E.* and *M.* have by their said declaration above supposed; and thereupon he putteth himself upon the country: And the said *E.* and *M.* do so likewise. Therefore the sheriff is commanded, that he cause to come in eight days from the purification of the blessed virgin *Mary* twelve, &c. By whom, &c. And who neither, &c. To recognize, &c. Because as well, &c.

Issue.

As to the second breach.

Issue.

Venire.

Debt.

Westmorland, *J.* S. late of *N.* in the county aforesaid, to wit. husbandman, was summoned to answer *J. D. Esq;* of a plea, that he render to him 15*l.* which he oweth to him, and unjustly detaineth from him, &c. And whereupon the said *J.* by *R. S.* his attorney saith, that *whereas* the said *J.* for two years last

Declaration in debt on the stat. 2 E. 6. c. 13. for not setting forth tithes. Plaintiff farmer of the tithes.

Defendant occupier of lands.

Sows the land with corn.

Reaps it.

Does not set forth the tithes.

past and more, was and yet is farmer and tenant of all the tithes of corn and grain in the rectory of *K.* in the said county, belonging or appertaining to the said rectory, yearly growing, coming or renewing within the said parish of *K.* aforesaid, and the bounds and limits and tithable places of the said parish: *And whereas* the said *J. S.* on the 30th day of *September* in the year of our Lord 1772, and from thence hitherto was the farmer, occupier and possessor of twenty acres of land, with the appurtenances, within the rectory and parish aforesaid, and the bounds, limits, and tithable places of the same parish, the tithes of corn and grain yearly growing, coming or renewing, of, in, and from which said twenty acres of land, within forty years next before the statute made in the parliament of the lord *Edw. VI.* late king of *E.* held at *W.* in the 2d year of his reign, and provided for and concerning the payment of tithes, were of right yielded, and payable and paid to the owner of the rectory aforesaid, or his farmer of the said rectory, or of the tithes thereof for the time being, in their proper kinds: *And* the said *J.* being so farmer, occupier and possessor of the said twenty acres of land, with the appurtenances; and the said *J.* being farmer of the said tithes as aforesaid, the said *J.* afterwards, *to wit*, the 1st day of *April* in the year of our Lord 1773, sowed the said twenty acres of land with oats, and at the time of corn-harvest then next following, *to wit*, the 20th day of *September* in the year of our Lord 1773, did cut and reap all the oats growing upon the said twenty acres of land, the tithes of which said oats so cut and reaped by him, did belong to the said *J.* as such farmer of the tithes aforesaid, and of right ought to have been yielded and paid to him: *Nevertheless* the said *J.* not regarding the statute aforesaid, nor dreading the penalty therein contained, did not divide, sever or set out the tenth part of the oats aforesaid, or any part thereof, for the tithes thereof, nor did agree with the said *J.* being farmer of the said tithes as aforesaid, for the tithes of the said oats; but afterwards, *to wit*, the 28th day of *September* in the year of our Lord 1773, aforesaid, at the parish of *K.* aforesaid, did take and carry away all the said oats, coming in and upon the said twenty acres of land, by him cut and reaped as aforesaid, from the place where they grew and ought to have been tithed, without setting forth the tithes thereof, and without any composition or agreement for the tithes thereof, had or made with the said *J.* being then farmer of the tithes as aforesaid,

said, against the form of the statute aforesaid. And the said J. in fact saith, that the same tithes or tenth part of the said oats so as aforesaid taken and carried away, at the time of such taking and carrying away thereof, were reasonably worth 5*l*. Wherefore an action accrued to the said J. to demand and have of the said J. the aforesaid 15*l*. for the treble value of the said tithes so taken and carried away by the said J. against the form of the statute aforesaid: *Nevertheless* the said J. (although often requested) hath not rendered the aforesaid 15*l*. or any part thereof, to the said J. but hath hitherto altogether refused, and still doth refuse, to render the same to him, to the damage of the said J. of 10*l*. And thereof he bringeth suit, &c.

Value of the tithes.

Gloucestershire, to wit, J. V. farmer of the rectory of M. in the county aforesaid, complaineth of S. H. in the custody of the marshal, &c. of a plea, that he render to him 6*l*. of lawful money of *England*, which he oweth him, and unjustly detaineth; *For that*, to wit, that *whereas* the said J. on the 25th day of *March* in the 2d year of the reign of our sovereign lord *James II.* now king of *England*, &c. and from that time continually hitherto, hath been and still is farmer of the rectory impropriate of M. with the appurtenances, in the county aforesaid, and of all and singular the tithes to the said rectory in any manner belonging and appertaining, yearly coming, growing, renewing, or happening within the said parish of M. in the county aforesaid, and the bounds, limits, and tithable places of the said parish. And the said S. on the 25th day of *March* in the 2d year aforesaid, and continually afterwards, from that time until the exhibiting of this bill, has been and now is the occupier and possessor of a close of meadow called *Foxwell's Wood*, containing by estimation thirteen acres, and of two acres of arable land in the northfield of M. aforesaid, and within the parish of M. aforesaid in the county aforesaid, and the bounds, limits and tithable places of the said parish; *The* tithes of the grain and hay yearly growing, coming and renewing out of and from which said close of pasture and two acres of land, for forty years next before the making a certain act made in the parliament of *Edward VI.* late king, held at *W.* in the county of M. in the 2d year of his reign, made and provided for the true payment of tithes in their proper kinds and species, were of right due and payable to the rector of the said rectory, or to his farmer or deputy of the said rectory for the time being. And the said S. so as aforesaid for the whole time aforesaid being occupier and possessor of the said close of meadow and two acres of land,

Declaration in debt on the stat. of 2 & 3 E. 6. c. 13. for not setting forth tithes. Plaintiff farmer of the rectory.

Defendant occupier of, &c.

The tithes payable for forty years before the statute.

Defendant plows the land and reaps the corn, &c.

Does not set
forth the tithes.

Per quod actio
accrevit.

Declaration in
debt Qui tam,
&c. on the stat.
29 Car. 2. c. 7.
for not going to
church. 1 Bro.
91. 1 Salk. 30.
373.

land, and the said J. being so as aforesaid farmer of the said rectory, the said S. afterwards, *to wit*, on the said 25th day of *March* in the 2d year aforesaid, ploughed and sowed the said two acres of land with wheat; and afterwards, *to wit*, on the 6th day of *September* in the said 2d year of the reign of our said lord the present king, mowed and made into hay all the grafs then growing in and upon the said close of pasture, and cut down all the wheat then growing in and upon the said two acres of land; the tithes of which said hay and wheat as aforesaid growing and coming out of and from the said close of meadow and the said two acres of land, of right belonging to the said J. as farmer of the said rectory, and ought of right to have been rendered and paid to him. Yet the said S. being a subject of our said lord the present king of this kingdom of *England*, no ways regarding the said statute, nor any ways fearing the penalties contained in the same, did not divide, separate, render and pay the tenth part of the said wheat and hay, or any parcel thereof, for the tithes of the same, nor any ways compounded or agreed with the said J. being so as aforesaid farmer of the said rectory, for the tithes of the same, or of any parcel thereof; but the said S. afterwards, *to wit*, on the 10th day of *October* in the 2d year aforesaid, then and there took and carried away all the grain and hay so as aforesaid growing and coming, and mowed in that year upon the said close of meadow and two acres of land, from the said places where the said hay and wheat grew, without any putting out of the tenth part of the same, and without any composition or agreement had or made with the said J. for the tithes of the same, which tithes were then worth 40s. of lawful money of *England*; Whereby an action accrued to the said J. to demand and have of the said S. the 6l. aforesaid, being treble the value of the tithes of the said wheat and hay taken and carried away by the said S. as aforesaid, contrary to the form of the said statute: Yet the said S. although often requested, &c. hath not yet paid the said 6l. to the said J. But, &c.

Suffex, to wit, S. A. Gent. who sueth in this behalf as well for our lord the king as for himself, complaineth of T. F. the elder, in the custody of the marshal of the *Marshalsea* of our lord the king before the king himself, of a plea, that he render to our said lord the king, and to the said S. A. who as well, &c. 200l. of lawful money of *England*, which he oweth them, and unjustly detaineth; for that, *that* the said T. F. on the 20th day of *May* in the 34th year of the reign of our sovereign lord

lord *Charles II.* now king of *England*, &c. being above the age of sixteen years, and then and from thence continually afterwards, for the space of ten months thence next ensuing, an inhabitant, and dwelling within this kingdom of *England*, to wit, at the parish of *All-Saints* in *Lewes* in the county aforesaid, did not repair, nor endeavour to repair to his parish-church of *All-Saints* in *Lewes* aforesaid, nor to any other church, chapel, or usual place of common prayer and preaching, or other divine service there used and administered according to the form of the statute in such case made and provided, but for the whole time aforesaid voluntarily and obstinately, without any lawful or reasonable cause or excuse, did forbear from the same, contrary to the form of the statute in such case made and provided:

Whereby an action accrued, as well to our said lord the king, as to the said *S.* who as well, &c. to demand and have of the said *T.* the said 200*l.* to wit, 20*l.* for every month of the said ten months in which the said *T.* contrary to the form of the said statute absented himself as aforesaid from church, chapel, or place of common prayer and preaching, or other divine service there: *Yet* the said *T.* altho' often requested, &c. did not pay the said 200*l.* to our said lord the king and the said *S.* who as well, &c. but hath hitherto intirely refused, and still doth refuse to pay them the same, to the damage of the said *S.* of 40*l.* And thereof as well for our said lord the king as for himself he bringeth suit, &c.

Actio accrevit.

And the said *T. F.* by ——— his attorney cometh and defendeth the force and injury when, &c. and saith, that he doth not owe to our said lord the king and the said *S.* who as well, &c. the said 200*l.* nor any part thereof, in manner and form as the said *S.* who as well, &c. above complaineth against him; And of this he putteth himself upon the country: And the said *S.* who as well, &c. doth so likewise. Therefore let a jury thereupon come before our lord the king at *W.* on *Wednesday* next after three weeks of the *Holy Trinity*; And who neither, &c. To recognize, &c. Because as well, &c. The same day is given to the parties aforesaid at the same place, &c.

Plea. Nil debet.

Issue.
Venire awarded.

Surrey, to wit, *J. F.* gent. complaineth of *W. L.* esq; marshal of the *Marshalsea* of the court of our lord and lady the present king and queen, before the said king and queen present here in court, in his proper person, of a plea, that he render to him 100*l.* of lawful money of *England*, which he oweth him, and unjustly detaineth; for

Declaration in debt against a gaoler on the Habeas corpus act. 31. Car. 2. c. 2. for denying a copy of a commitment.

for that, *to wit*, That *whereas* after the first day of July in the year of our Lord 1679, he the said J. F. in vacation-time and out of term, *to wit*, on the 20th day of March in the 2d year of the reign of our lord William and lady Mary. now king and queen of England, &c. at the parish of St. George in Southwark in the county of Surrey, was taken and detained in prison by the said W. L. without any warrant or commitment for treason or felony expressed in the same: And also *whereas* afterwards *to wit*, on the 29th day of March in the said 2d year of the reign of our said lord the king and lady the queen, at the parish aforesaid in the county of Surrey aforesaid, the said J. F. demanded of the said W. L. a true copy of the warrant of commitment and detainer of the said J. F. in the said prison by him the said W. L. Yet the said W. L. altho' often requested, within the space of six hours next after the said demand, did not deliver a copy of the warrant of commitment and detainer of the said J. F. in the custody of the said W. L. but he intirely neglected and omitted to deliver the same to him, contrary to the form of the statute in such case lately made and provided; whereby and by force of the said statute the said W. L. has forfeited the sum of 100l. Whereby and by force of the said statute an action accrued to the said J. F. being the party aggrieved, to demand and have of the said W. L. the said 100l. Yet the said W. altho' often requested, &c. hath not yet paid the said 100l. or any part thereof, to the said J. but hath hitherto intirely refused, and still doth refuse to pay him the same, to the damage of the said J. of 100l. And thereof he bringeth suit, &c.

Elsewhere, as it appears of the term of *Easter*, in the seventeenth year of the reign of king George the third, on the _____ roll, it is thus contained: *Somersetshire*, to wit, T. S. late of the borough of L. in the county aforesaid, gentleman, was summoned to answer E. P. esq; of a plea, that he render to him 500l. which he oweth him, and unjustly detaineth; for that, *to wit*, that *whereas* the town of I. in the county aforesaid is an ancient borough, and that two burgesses of the same borough to come to every parliament of our lord the king and his predecessors, kings and queens of England, from the time to the contrary whereof the memory of man is not, have been chosen and used to be chosen by the burgesses and inhabitants of the said borough, having votes in that election: And *whereas* a certain writ of our lord the present king, issued out of his chancery at W. in the county of M. on the 7th day of January in the 16th year of his reign,

Declaration of a precedent term, in debt on statute 7 & 8 W. 3. c. 25. §. 6. against a returning officer, for refusing a copy of a poll
Custom to chuse members.

Writ of election.

reign, bearing date the same day and year, directed to the sheriff of the said county of S. by which said writ our said lord the king reciting, that whereas our said lord the king, by the advice and consent of his council, for certain arduous urgent affairs concerning our said lord the king, the state and defence of his kingdom of *Great Britain* and the church, had ordered a certain parliament to be held at his city of *W.* on the 17th day of *March* then next ensuing, and there to have conference and treat with the prelates, great men and peers of his said kingdom, did command and strictly injoin the then sheriff of the county of S. that proclamation being made in his next county-court to be holden after the receipt of the said writ, at the time and place aforesaid, two knights girt with swords, of the most fit and discreet of the said county, and of every city of the said county two citizens, and of every borough two burgesses of the most discreet and sufficient, freely and indifferently by them who at such proclamation should be present, the said sheriff should cause to be elected, according to the form of the statute in that case made and provided, and the names of such knights, citizens and burgesses so elected, in certain indentures thereupon to be made between the said sheriff and them who shall be present at such election to be inserted, whether the person so elected should be present or absent, and them at the said day and place should cause to come; so that the said knights full and sufficient power for themselves and the commonalty of the said county, and the said citizens and burgesses for themselves and the commonalty of the said cities and boroughs, severally from them might have, to do and consent to those things which then and there by the common council of his said majesty's kingdom (with God's assistance) should happen to be ordained upon the affairs aforesaid; so that through defect of such power, or by an improvident election of such knights, citizens and burgesses, the said affairs might not in any wise remain unprovided for; Willing nevertheless, that neither the said sheriff, nor any other sheriff of his said majesty's kingdom aforesaid should in any wise be elected; and the said election in full county of the same sheriff so made, distinctly and openly under the seal of the said sheriff, and the seals of them who should be present at such election, at such election the sheriff should certify to our said lord the king, in his Chancery, at the day and place aforesaid, without delay, remitting to our said lord the king one part of the aforesaid indentures sewed to the said indentures

Precept to a defendant, as bailiff of the borough.

The election.

Poll taken.

Copy demanded.

dentures together with the said writ, as by the said writ now remaining in the court of Chancery of our said lord the king at *W.* afore said more fully appears: Which said writ afterwards, *to wit*, on the 26th day of *January* in the said 16th year of the reign of our said lord the present king, at *I.* afore said in the said county of *S.* was delivered to one *J. T.* esq; then sheriff of the said county of *S.* to be executed in form afore said. By virtue of which said writ the sheriff afterwards, *to wit*, on the said 26th day of *January* in the 16th year afore said; there made his certain precept in writing, sealed with the seal of his said office of sheriff, directed to the bailiff of the said borough of *I.* in the county afore said, of and for the electing within that borough two burgesses of the same borough, according to the form and effect of the said writ: Which said precept afterwards, *to wit*, on the said 26th day of *January* in the 16th year afore said, at *A.* afore said, was delivered to the said *T. S.* then bailiff of the said borough of *I.* (to which said bailiff the execution of the said precept belonged) to be executed in form of law. By pretext of which said precept afterwards, *to wit*, on the 2d day of *February* in the said 16th year of the reign of our lord the present king, at *A.* afore said, the election of two burgesses for the same borough of *I.* afore said, to come to the said parliament according to the form and effect of the said writ, came on. And thereupon the said *E. P.* and one Sir *J. B.* knight *W. B.* esq; and *J. H.* esq; were and stood candidates at the said election, that of them two might be chosen to be burgesses of parliament for the same borough; and many burgesses of the said borough were present at the said election, and having votes in that behalf, they and there gave their votes for the said *E. P.* to be one of the said two burgesses of parliament for the said borough; and divers burgesses of the said borough also present at the said election, then and there gave their votes for the said Sir *J. B.* to be another of the said two burgesses of parliament for the said borough; and divers other burgesses of the said borough also present at the said election, then and there gave their votes for the said *W. B.* and *J. H.* to be the two burgesses of parliament for the said borough. So that for the making the said election plain, a poll of the voters at the said election being required and demanded by some of them, was then and there had, and taken in writing before the said *T. S.* the bailiff of the said borough as afore said; and he the said *T. S.* then and there took and had the said poll. And after the poll of voters of, in and for the said election taken

taken, had and ended, *to wit*, on the 10th day of February in the 16th year aforesaid, at *L.* aforesaid, the *E. P.* requested the said *T. S.* then bailiff of the said borough aforesaid, to deliver to the said *E. P.* a copy of the poll of voters found at the said election, and then and there was ready and offered to pay to the said *T. S.* any reasonable sum of money for writing thereof, which he should demand for the same: Yet the said *T. S.* bailiff of the said borough as aforesaid, (to which said bailiff the execution of the said precept for electing the said burgesses then belonged) no ways regarding the duty of his office of bailiff of the said borough in this behalf, and the statute in such case made and provided, nor any ways fearing the penalty contained in the said statute, did not then or afterwards deliver to the said *E. P.* a copy of the poll of voters at the said election for the said borough, but voluntarily then and afterwards intirely refused to deliver the same to him, contrary to the said statute made and provided: *Whereby* an action accrued to the said *E.* to demand and have of the said *T. S.* the said 500*l.* Yet the said *T. S.* although often requested, hath not yet paid the said 500*l.* to the said *E. P.* but hath hitherto intirely refused, and still doth refuse to pay him the same: Wherefore he saith that he is injured, and hath damages to the value of 40*l.* And thereof he bringeth suit, &c.

Refused.

Actio accrevit.

And now at this day, *to wit*, on the morrow of the Holy Trinity, in the 2d year of the reign of our said lord the present king, in this same term, until which day the said *T.* had leave to imparle, and then to answer, he cometh as well the said *E.* by his attorney aforesaid, as the said *T.* by *J. L.* his attorney. And the said *T.* denieth the force and injury when, &c. and saith that he doth not owe to the said *E.* the said 500*l.* or any part thereof, in manner and form as he the said *E.* hath above declared against him; And of this he putteth himself upon the the country: And the said *E.* doth so likewise, &c. Therefore let a jury come thereupon before our lord the king at *W.* in three weeks of the Holy Trinity; And who neither, &c. To take cognizance, &c. Because as well, &c. The same day is given to the parties aforesaid at the same place, &c. At which day the said parties came by their attornies aforesaid before our lord the king at *W.* and the Theriff did not return the said writ: Therefore let a jury thereupon, as before, come before our lord the king at *W.* in fifteen days of St. Margaret; And who neither, &c. To take cognizance, &c. Because as well, &c. The same day is given to the parties

Imparlanee.

Non debet.

Issue.

Venire.

Vic. non misit breve.

Alias venire.

Vic. non misit
breve.

Alias venire.

Process conti-
nued.
Nisi prius.

Postea.

Tales.

Verdict for the
plaintiff.

parties aforesaid at the same place, &c. *At which* the said parties came by their attornies aforesaid before our lord the king at *W.* and the sheriff did not return the said writ. *Therefore* let a jury thereupon, before, come before our lord the king at *W.* on the octave of the purification of the blessed Virgin *Mary*; And who neither, &c. To take cognizance, &c. Because as well, &c. The same day is given to the parties aforesaid at the same place. *Afterwards* the process being continued between the parties aforesaid of the plea aforesaid, by the jury being respited between them, before our lord the king at *W.* until fifteen days of *Easter* the next ensuing, unless the justices of our lord the king assigned to take the assizes in the county aforesaid, should first come on *Monday* the 18th day of *March* at the castle of *T.* in the county aforesaid, by form of the statute &c. for default of the jurors, &c. *At which* said fifteen days of *Easter*, before our lord the king at *W.* the said parties came by his attorney aforesaid; and the said justices of our lord the king assigned to take the assizes, &c. before whom, &c. sent here their record before them had these words; *Afterwards*, on the day and at the place within contained, before *R. P.* esq; one of the barons of the Exchequer of our lord the king, and Sir *R.* knight, one of the justices of our lord the king assigned to hold pleas before the king himself, justices of our lord the king assigned to take the assizes in the county of *S.* by form of the statute, &c. come as well the within named *E. P.* esq; as the within written *T. S.* bailiff of the borough of *I.* within written, in the county aforesaid, by their attornies within contained, and the jurors of the jury, whereof mention is within made, being demanded, some of them, to wit, *R. C.* and *R. C.* come and are sworn upon that jury; and because the residue of the jurors of the same jury do not appear, *Therefore* others of those standing about, hereunto chosen by the sheriff of the county aforesaid, at the request of the said *E. P.* and by the command of the said justices, are added anew, whose names are assiled in the within written panel, according to the form of the statute in such case made and provided; and the jurors so added anew, to wit, *S. S. W. E. J. S. J. C. L. D. H. P. N. H. R. J. D.* and *H. T.* being also demanded, come, who together with the said other jurors first hereunto impanelled and sworn, being chosen, tried and sworn to speak the truth of the within contained, say upon their oath that the said *T. S.* oweth to the said *E. P.* the within mentioned 500l. and every part thereof, in manner afore

form as the said *E. P.* hath within declared against him: and they assess the damages of the said *E. P.* by occasion of the detaining the within written debt, besides his costs and charges by him about his suit in this behalf expended, to 2d. and for those costs and charges to 10s. Therefore it is considered, that the said *E. P.* recover against the said *T. S.* his said debt, and the damages aforesaid assessed by the said jury in form aforesaid; and also 18l. for the increase of his said costs and charges, adjudged by the court of our said lord the king now here, to the said *E. P.* by his assent: Which said damages amount in the whole to 20l. and 2d. And the said *T. S.* in mercy, &c.

Judgment.

Elsewhere, as it appears of the term of *St. Michael* in the 16th year of the reign of king *Geo. III.* in the 631 *Roll*, it is thus contained: *Kent*, to wit, *E. B.* late of *H.* in the said county, gent. and *P. B.* late of the same place, gent. have been summoned to answer to *J. earl of W.* who sueth as well for himself as for the poor of the parish of *N.* in the said county, in a plea, that they render to them 40l. which they owe to them, and unjustly detain, &c. And whereupon the said *J. earl of W.* who sueth as well for himself as the poor of the said parish in this respect, by *F. M.* his attorney, saith, that the said *E.* and *P.* after the first day of *May* in the year of our Lord 1711, to wit, on the 16th day of *August* in the year of our Lord 1742, in the nighttime of that day, at the parish aforesaid, did take certain partridges, to wit, eight partridges, contrary to the statute in such case lately made and provided; by reason whereof, by force of the statute in such case lately made and provided, an action has accrued to the said *J. earl of W.* who sueth as well, &c. to demand and have of the said *E.* and *P.* the said 40l. to wit, 5l. for each of the said eight partridges so taken by them as aforesaid, for himself and the poor of the said parish: Nevertheless the said *E.* and *P.* altho' often requested, have not rendered to the said *J. earl of W.* and the poor of the said parish, the said 40l. or any any part thereof, but have wholly refused, and still refuse to render the same to them; Whereby the said *J. earl of W.* who as well, &c. saith that he is injured, and hath damage to the value of 10l. And thereof as well for himself as the poor of the said parish, he bringeth suit, &c.

Declaration of a precedent term, in debt on the statute 9 Ann c. 25. for taking partridges in the night.

And the said *E.* and *P.* by *S. E.* their attorney come and pray leave to imparle until the octave of *St. Hilary*; and they have it, &c. The same day is given to the said *J. earl of W.* here, &c. And now here at this day,

Impar lance.

Plea, Nil debent.

Issue.

Declaration in debt on the statute, for keeping a greyhound and killing a hare, not being a person qualified.

Bluet v. Needs.
Com. Rep.
322.

Second count.

to wit, on the octave of St. Hilary in the same term of St. Hilary, cometh as well the said earl, who as well, &c. as the said E. and P. by their attorney aforesaid. And the said E. and P. defend the force and injury when, &c. and say that they do not owe the said 40l. as in and by the said declaration is above supposed; and hereupon they put themselves upon the country: And the said earl doth so likewise. Therefore the sheriff is commanded, &c.

Kent, to wit, E. L. late of, &c. was summoned to answer to the poor of the parish of E. in the county aforesaid, and to Sir J. S. bart. who sueth in this particular as well for himself as for the said poor of the said parish of E. aforesaid, of a plea, that he render to the said poor and the said J. S. who sueth as aforesaid, 10l. of lawful money of Great Britain, which he oweth to, and unjustly detaineth from, &c. And whereupon the said Sir J. who sues as aforesaid, by H. C. his attorney saith, That the said E. on the 30th day of March 1736, at and in the parish of E. aforesaid, did keep a certain greyhound for the destruction of the game of this kingdom, he the said E. then not being a person qualified by the laws of this realm to keep a greyhound for the destruction of the game, against the form of the statute in such case made and provided: Whereby and by force of the statute in such case lately made and provided, an action hath accrued to the poor of the parish aforesaid, and to the said Sir J. who sues as aforesaid, to demand and have of the said E. for his said offence 5l. parcel of the said 10l. And the said Sir J. who sueth as aforesaid, further saith, That the said E. on the said 30th day of March in the year aforesaid, in the said parish of E. in the county aforesaid, did with a certain greyhound kill one hare, he the said E. then not being a person qualified to kill game, against the form of the statute in such case lately made and provided: Whereby, and by force of the statute in such case lately made and provided, an action hath accrued to the poor of the parish aforesaid, and to the said Sir J. who sueth as aforesaid, to demand and have of the said E. for his said last mentioned offence, 5l. residue of the said 10l. Yet the said E. (altho' often requested) hath not yet paid the said 10l. or any part thereof, to the said poor and the said Sir J. who sueth as aforesaid, or either of them; but he to pay the same to the said poor and the said Sir J. who sueth as aforesaid, hitherto wholly hath, and still doth refuse, to the said Sir J. who sueth as aforesaid, his damage of 10l.

And

And thereof as well for the said poor as for himself he bringeth suit, &c.

And the said *E. L.* by *R. P.* his attorney cometh and defendeth the wrong and injury when, &c. and saith, that he doth not owe to the said *Sir J.* who sueth as well, &c. the said sum of 10l. or any part thereof, in manner and form as the said *Sir J.* who sueth as well, &c. above thereof complaineth against him; and of this he putteth himself upon the country: And the said *Sir J.* who sueth as aforesaid, doth likewise the same. *Therefore, &c.*

Plea, Nil debet.

Issue.

Judgment for not entering the issue.

And the said *Sir J. S.* although solemnly called, came not, nor hath entered his said issue, nor hath further prosecuted his said writ: *Therefore* he and his pledges of prosecution are thereupon amerced, &c. And the names of the pledges of the said *Sir J.* are, &c. And that the said *E.* depart without day, &c. It is also considered, that the said *E.* do recover against the aforesaid *Sir J.* his damages by reason of the premisses, to 3l. 16s. 8d. to the said *E.* by the discretion of the justices here adjudged at his request for his costs and charges in this behalf sustained, according to the form of the statute in such case made and provided.

Declaration in debt on the statute of usury. C. B.

Middlesex, to wit, *J. L.* late of, &c. was summoned to answer *W. R.* who sueth as well for our lord the king as for himself in this behalf, in a plea, that he render to our said lord the king and the aforesaid *W.* the sum of 101l. 11s. of lawful money of *Great Britain*, which to them he oweth and unjustly detaineth, &c. And whereupon the said *W.* who sueth as well for our said lord the king as for himself, by *J. B.* his attorney complaineth, That the said *J. L.* after the 29th day of *September* in the year of our Lord 1714, to wit, on the 22d day of *June* in the year of our Lord 1736, at the parish of *St. Martin in the Fields* in the county aforesaid, upon a certain contract made after the said 29th day of *September*, to wit, on the 22d day of *June* in the year of our Lord 1733, at the parish aforesaid in the county aforesaid, between the said *J.* and one *M. M.* took, accepted and received of and from the said *M.* the sum of 4l. 14s. 6d. by way of corrupt bargain for giving day of payment to her the said *M.* from the said 22d day of *June* in the year of our Lord 1733, to the 22d day of *June* in the year of our Lord 1736, of the sum of 10l. 10s. lent on the 22d day of *June* in the year of our Lord 1733, at the parish aforesaid in the county aforesaid, by the said *J.* to the said *M.* Which said sum of 4l. 14s. 6d. so took, accepted and received by the said *J.* of the said *M.* as aforesaid, is above

the

the rate of 5*l.* for the forbearing of 100*l.* for one year, and is against the form of the statute in such case made and provided: *Whereby* an action hath accrued to the said *W.* who sueth as well for our lord the king as himself, to demand and have of and from the said *J.* the sum of 31*l.* 10*s.* part of the said 101*l.* 11*s.* being the treble value of the said sum of 10*l.* 10*s.* of the said *J.* by him lent to the said *M.* as aforesaid; [*other like counts for the remainder of the 101*l.* 11*s.**]

Declaration in
debt on a judgment.

London, to wit, *R. D.* late of *L.* carpenter, was summoned to answer *L. P.* of a plea, that he render to him 62*l.* of lawful money of *Great Britain*, which he oweth to and unjustly detaineth from him, &c. *And whereupon* the said *L.* by *J. C.* his attorney saith, that whereas the said *L.* heretofore, that is to say, in *Easter* term in the 4*th* year of the reign of his present majesty king *George* the second, in his majesty's court before Sir *R. E.* knt. and his brethren, then his majesty's justices of the common bench here at *W.* in the county of *M.* by the consideration of the said court recovered against the said *R.* 62*l.* which were adjudged to the said *L.* in the said court, for his damages which he had sustained, as well by occasion of the not performing certain promises and undertakings to the said *L.* by the said *R.* then lately made, as for his costs and charges by him about his suit in that behalf expended, whereof the said *R.* is convicted, as by the record and proceedings thereof, now remaining in his majesty's said court here, may more fully and at large appear; *Which* said judgment still remaineth in its full strength, force and effect, not reversed, vacated, annulled, discharged or satisfied. *And* the said *L.* hath as yet obtained no satisfaction of the aforesaid judgment: *Whereby* an action hath accrued to the said *L.* to demand and have of the said *R.* the said 62*l.* *Yet* the said *R.* (although often requested) hath not yet rendered the said 62*l.* or any part thereof, to the said *L.* but to render the same to him hitherto hath, and still doth wholly deny, to the damage of the said *L.* of 20*l.* *And* thereof he bringeth suit, &c.

Plea, Nul tiel
record.

And the said *R.* by *W. W.* his attorney cometh and defendeth the force and injury when, &c. and saith that the said *L.* ought not to have his said action against him, because he saith, that there is not any such record of recovery of damages aforesaid against him the said *R.* in his said majesty's court before Sir *R. E.* knt. and his brethren, his majesty's justices of the common bench, as the said *L.* in his declaration hath alledged; and this he

is ready to verify: Therefore he prayeth judgment, if the said *L.* ought to have his said action thereof against him, &c.

And the said *L.* saith, that by any thing before alledged he ought not to be barred from having his aforesaid action maintained against the said *R.* because he saith that there is such a record of recovery against him the said *R.* in his said majesty's court of common bench here remaining, as by the said declaration is above alledged; and this he is ready to verify by the said record: And he prayeth that the said record may be inspected and seen by the judges here, &c. And because the said *L.* hath not the said record now ready here in court, it is said by the said court here to the said *L.* that he have the record here on ———: The same day is given to the said *R.* here, &c.

Replication,
habetur tale
recordum.

Day given to
bring in the
record.

Note; Upon bringing the record into court on the day given, the secondary draws up a rule of court for judgment *Nisi causa* within four days, and at the expiration of that time the secondary certifies at the foot of the rule that no cause hath been shewn; after which judgment may be signed.

Surry, to wit, *J. M.* late, &c. was summoned to answer *H. G.* of a plea, that he render to him 99s. and 8d. which he oweth to and unjustly detaineth from him, &c. And thereupon the said *H.* by *T. C.* his attorney saith, That whereas the said *H.* (that is to say) at the court of the king's palace at *W.* held before the judges of the said court there (*to wit*) at *S.* in the county of *S.* aforesaid, within the jurisdiction of the said court, on *Friday* the 23d day of *January* in the 9th year of the reign of the present king, by consideration of the said court recovered against the said *J. M.* (by the name of *J. M.*) 99s. and 8d. which were assessed to the said *H.* in the aforesaid court of the king's palace at *W.* held before the judges of the said court here, for his damages which he had sustained, occasioned by the non-performance of several promises and undertakings of the said *J. M.* made to the said *H.* by him the said *J.* besides his costs and charges about his said suit in that behalf expended, by the said court there for increase adjudged, whereof the said *J.* is convicted; as by the record and proceedings in the same court of the king's palace at *W.* held before the judges of the said court there, *to wit*, at *S.* aforesaid, in the county of *S.* aforesaid, within the jurisdiction of the said court there remaining, may appear: Which said judgment still remaineth in the said court there in full force, not in the least satisfied, reversed or discharged. And the said *H. G.*

Declaration in
debt on a judg-
ment in the
palace-court.

hath not as yet sued out any execution upon that judgment: By which an action hath accrued to the said *H.* to require and have of the aforesaid *J. M.* the aforesaid 99s. and 8d. *Nevertheless, &c.*

Plea, *Nul tiel Record.*

Replication, *Habetur tale recordum.*

Certiorari to
the palace-court
prayed and a-
warded.

Return.

And hereupon the said *H.* prayeth the king's writ to be directed to the judges of the court of the king's palace at *Westminster*, and to every of them, to certify to the justices of the said lord the king here, Whether there be such record of such recovery of 99s. 8d. against the said *J.* by the said *H. G.* or not. And it is granted to him returnable here. — At which day here come as well the said *H.* as the said *J.* by their attornies aforesaid, and the said judges of the said court, namely, *William* duke of *Devonshire*, steward of the king's household, Sir *P. M.* Knight Marshal of the said household, and Sir *T. A.* Knight, steward of the palace court aforesaid, sent to the justices here the record aforesaid, whereof there is mention above made, between the parties aforesaid, and remaining before them, which said writ and record remain filed amongst the records here without day, &c. Whereupon the said *H.* prayeth judgment and his debt aforesaid, together with his damages, by reason of detaining of the said debt to be adjudged to him, &c.

Declaration in
debt on a judg-
ment of Non-
prof.

Middlesex, to wit, *A. B.* late, &c. was summoned to answer *D. E.* in a plea, that he render to him 3l. 3s. which he oweth to and unjustly detaineth from him, &c. And whereupon the said *D. E.* by *W. R.* his attorney saith, That whereas he the said *D. E.* heretofore, to wit, in the term of the *Holy Trinity* in the 10th and 11th years of the reign of his present majesty king *George* the second, in his said majesty's court of *Common Bench* at *Westminster* before Sir *John Willes*, Knt. and his brethren, then his said majesty's justices of the said court here, to wit, at *Westminster* in the county aforesaid, by judgment of the same court recovered against the said *A. B.* 33l. 4s. which were adjudged to the said *D. E.* in the same court according to the form of the statute in such case made and provided for his costs and charges which he had sustained, for that the said *A. B.* did not prosecute his said majesty's writ in a certain plea of [as the case is] lately brought by the said *A. B.* against the said *D. E.* in the said court, whereof the said *A. B.* is convicted as by the record and proceedings thereof now remaining in his said majesty's court of *C. B.* at *Westminster* aforesaid doth plainly appear; which said judgment still remaineth in force and power,
not

not reversed, annulled or satisfied. And the said *D. E.* hath not yet obtained execution of the said judgment. *Whereby* an action hath accrued to the said *D. E.* to demand and have of the said *A. B.* the said 33s. 4d. parcel of the said 3l. 3s. *And also whereas* the said *A. B.* on the 22d day of *July* in the year of our Lord 1737, at *W.* aforesaid, had borrowed of the said *D. E.* 29s. 8d. remainder of the said 3l. 3s. to be paid to the said *D. E.* when he the said *A. B.* should be afterwards thereunto requested. *Yet* the said *A. B.* although often requested, hath not rendered to the said *D. E.* the said 3l. 3s. or any part thereof, but hath hitherto refused and still doth refuse to render the same to the said *D. E.* whereby he saith, that he is injured and damnified to the value of 5l. And thereof bringeth suit, &c.

Debt on a mutatus.

Middlesex, A. B. late of, &c. was summoned to answer *C. D.* executor of the testament and last will of *E. F.* deceased, of a plea, that he render to him 100l. of good and lawful money of *Great Britain*, which he unjustly detaineth from, &c. *And* thereupon the said *C.* by *W. R.* his attorney saith, *That whereas* the said *B.* in his life-time, to wit, in the term of *St. Michael* in the 6th year of the reign of the lord the now king, here at *W.* in the said county, before *Sir R. E.* knt. and his brethren, then justices of our said lord the king of the bench, the said *E.* by the judgment of the said court did recover against the said *A.* a certain debt of 97l. and 6os. for his damages which he sustained on account of the detaining of the said debt, whereof he is convicted, as by the record thereof in the said court now remaining plainly appeareth. *And* the said *C.* averreth, that the said 100l. hath not been paid to the said *E.* in his life-time, or to the said *C.* since his death, or to either of them; and that no execution of the debt and damages aforesaid, or any part thereof, hath yet been had or obtained: *By* reason whereof an action accrued to the said *E.* in his life-time, and to the said *C.* since his death, to demand and have of the said *A.* the said 100l. *Yet* the said *A.* altho' often requested, hath not paid the said 100l. to the said *E.* in his life-time, or to the said *C.* since the death of the said *E.* or to either of them; but to pay the same to them hath hitherto refused, and to pay the same to the said *C.* still doth refuse: Whereupon he is prejudiced, and hath damage to the value of 20l. And thereof he bringeth suit, &c. *With this*, that the said *C.* will verify that the judgment aforesaid, still remaineth in its

Declaration in debt by an executor, on a judgment obtained by the testator.

Profert of the
letters testa-
mentary.

full strength and power, in no ways reversed, annulled or satisfied. And the said *C.* bringeth here into court the letters testamentary of the said *E.* whereby it plainly appeareth to the court here, that the said *C.* is executor of that testament, and hath the administration thereof granted to him, &c.

Declaration in
debt on a judg-
ment obtained
in the King's
Bench.

Middlesex, to wit, *R. M.* late of *B.* in the county of *Bucks*, esq; was summoned to answer *J. F.* clerk, in a plea, that he render to him 30*l.* 13*s.* which he oweth to him and unjustly detaineth, &c.

And whereupon the said *J.* by *R. H.* his attorney saith that whereas the said *J.* heretofore, that is to say, in the term of *Easter* in the 11th year of the reign of the lady *Anne* late queen of *Great Britain*, &c. in the court of the said lady the late queen, before the queen herself at *W.* by bill without the writ of the said late queen, and by the judgment of the same court, recovered against the said *R. M.* by the name of, &c. 30*l.* of debt, and also 35*s.* for his damages which he sustained, as well by occasion of the detaining that debt, as for his costs and charges by him about his suit in that behalf expended, whereof the said *R.* is convicted; as by the record and process thereupon, remaining in the court of our lord the present king, before the king himself at *W.* more fully appeareth: Which said judgment still remaineth in its full force and effect, no ways reversed, annulled, or in any manner satisfied; and the said *J.* hath not yet sued out execution of the said judgment against the said *R.* Whereby an action hath accrued to the said *J.* to demand and have of the said *R.* the said 30*l.* 13*s.* Nevertheless the said *R.* altho' often requested, &c. hath not yet rendered the said 30*l.* 13*s.* to the said *J.* but to render the same to him hath hitherto wholly refused, and still doth refuse: Whereupon the said *J.* saith that he is injured, and hath damage to the value of 20*l.* And thereof he bringeth suit, &c.

Declaration in
debt on a mu-
tuatus.
Mich. 10 W. 3.
Roll 734.

Cambridge, to wit, *T. A.* late of *H.* in the county afore-
said, the younger, gent. was summoned to answer *T. A.*
the elder, esq; in a plea, that he render to him 2000*l.*
which he oweth him and unjustly detaineth, &c. And
whereupon the said *T. A.* the elder, by *R. D.* his attorney
saith, That whereas the said *T. A.* the younger, on the
10th day of *June* in the 10th year of the reign of our
lord the present king, at the town of *C.* in the county of
C. borrowed of the said *T. A.* the elder the said 2000*l.*
to be paid to the said *T. A.* the elder when he should
be thereunto requested: Nevertheless the said *T. A.* the
younger,

younger, altho' often requested, hath not yet rendered the said 200l. to the said *T. A.* the elder, but the same hitherto to render to him hath refused, and still doth refuse: Whereupon he saith that he is injured, and hath damage to the value of 20l. And thereof he bringeth suit, &c.

And the said *T. A.* the younger, by *J. R.* his attorney cometh and defendeth the force and injury when, &c. And the same attorney saith, that he is not informed by the said *T. A.* the younger of any answer to be given for the said *T. A.* the younger to the said *T. A.* the elder in the said plaint; and he saith nothing else thereupon: Whereby the said *T. A.* the elder remaineth against the said *T. A.* the younger thereupon undefended: Therefore it is considered that the said *T. A.* the elder recover against the said *T. A.* the younger his said debt, and his damages by occasion of the detaining of that debt to 40s. to the said *T. A.* the elder, by his assent by the court here adjudged.

And the said *T. A.* the younger in mercy, &c. Afterwards, that is to say, on the 30th day of *May* in the 1st year of the reign of our sovereign lord *George* now king of *Great Britain*, &c. came here into court *N. W.* and *M.* his wife, executrix of the testament of the said *T. A.* the elder, esq; by *B. B.* their attorney, and bring here into court the letters testamentary of the said *T.* by which it sufficiently appeareth to the court here, that the said *M.* is the executrix of the said testament, and hath the administration thereof, &c. And the said *N.* and *M.* by their said attorney, by special warrant to him in this behalf made, acknowledged, that they are satisfied for the said debt and damages; therefore he the said *T. A.* the younger is quit of the said debt and damages, &c.

—, to wit, *A. B.* late of, &c. esq; and *E.* his wife, administratrix of all and singular the goods and chattels, rights and credits, which were of *B. C.* at the time of his death, who died intestate lately called, &c. were summoned to answer *P. B.* of a plea, that they render to him 223l. which they owe him and unjustly detain, &c. And whereupon the said *P.* by *L. R.* his attorney saith, that whereas the said *P.* lately in the court of our lord the king now here, to wit, in the term of *St. Michael* in the 20th year of the reign of, &c. at *W.* in the county of *M.* by the consideration of the same court recovered against the said *B. C.* in his life-time, as well a certain debt of 220l. as 60s. which in the same court were adjudged to the said *P.* for his damages which he had by occasion of the detaining that debt whereof the said

Judgment by
Non sum infor-
matus.

Signed 23 Dec.
anno reg. W.
3. decimo.

Mercy.
Satisfaction ac-
knowledged by
baron and feme,
executrix of the
plaintiff.

Declaration in
debt against ba-
ron and feme,
administratrix
on a judgment
against the in-
testate, suggest-
ing a devastavit.
Vide 2 R.
Raym. 1510.
3 D. A. 381.
p. 6.
2 Vent. 84.
1 Sid. 228.

Devastavit
suggested.

Actio accrevit.

Plea, plene ad-
ministravit.

Traverse.

Replication.

said *B. C.* was convicted, as by the record and process thereupon remaining in the same court here more fully appeareth; which said judgment still remaineth in full force and effect, no ways reversed or annulled: and the said *P.* hath not as yet sued out execution against the said *B. C.* upon the said judgment recovered in form aforesaid. And the said *P.* further saith, that divers goods and chattels which were of the said *B. C.* at the time of his death, to the value of the debt and damages aforesaid, at *W.* aforesaid, have come to the hands of the said *A.* and *E.* to be administered; and that the said *A.* and *E.* afterwards, to wit, on the 20th day of *April* in the 30th year of the reign of, &c. at *W.* wasted the said goods and chattels, and disposed of and converted the same to the proper use of the said *A.* the said *P.* being no ways satisfied of his debt and damages aforesaid: *Whereby* an action accrued to the said *P.* to demand and have of the said *A.* and *E.* the said 223l. Yet the said *A.* and *E.* altho' often requested, have not yet rendered, nor has either of them yet rendered the said 223l. to the said *P.* but have hitherto refused, and still do refuse, to render the same to him: Wherefore he saith he is injured, and hath damage to the value of 20l. And thereof he bringeth suit, &c.

And the said *A.* and *E.* by *T. G.* their attorney come and defend the force and injury when, &c. and say that the said *P.* ought not to have or maintain his said action thereupon against them, because they say that they the said *A.* and *E.* have fully administered all the goods and chattels which were of the said *B. C.* at the time of his death in their hands to be administered; and that they have not, nor on the day of suing out the original writ of the said *P.* nor at any time afterwards, had any goods or chattels which were of the said *B. C.* at the time of his death in their hands to be administered; *Without this*, that they the said *A.* and *E.* have wasted those goods and chattels, and disposed of and converted the same to the proper use of the said *A.* as the said *P.* has by his said declaration above supposed; and this they are ready to verify: Wherefore they pray judgment, if the said *P.* ought to have and maintain his said action thereupon against them.

And the said *P.* saith, that he by any thing by the said *A.* and *E.* in pleading above alledged ought not to be barred from having his said action thereupon against them, because he saith, as before, that the said *A.* and *E.* have wasted the goods and chattels which were of the said *B. C.* at the time of his death, to the value of the said

faid debt and damages, and disposed of and converted the same to the proper use of the said *A.* as the said *P.* hath above declared against them: And this he prayeth may be inquired of by the country.

Elsewhere, as it appears of the term of Easter, in the thirty-second and thirty-third years of the reign of king *Charles II.* on the forty-fifth roll, it is thus contained: *Hertfordshire*, to wit, *R. B.* late of ——— Gentleman, administrator of all and singular the goods and chattels, rights and credits, which were of *W. P.* deceased, otherwise lately called *W. P.* of *R.* in the county of *E.* yeoman, was summoned to answer *I. P.* of a plea, that he render to him 16l. of lawful money of *England*, which he unjustly detained from him; for that, to wit, that whereas the said *W.* in his life time, to wit, on the 19th day of *May* in the 25th year of the reign of our sovereign lord *Charles II.* now king of *England*, &c. at *H.* in the county aforesaid, by his writing obligatory sealed with the seal of the said *W.* And to the court of our said lord the king now here shewn, the date whereof is on the same day and year, acknowledged himself to be held and firmly bound to the said *J.* in the said 16l. to be paid to the said *J.* when he should be thereunto afterwards requested: Yet the said *W.* in his life-time, and the said *R.* after the death of the said *W.* although often requested, &c. have not paid, nor hath either of them paid the said 16l. to the said *J.* but the said *W.* in his life-time, and the said *R.* after the death of the said *W.* intirely refused to pay him the same, and the said *R.* still refuseth to pay him the same, and unjustly detaineth, to the damage of the said *J.* of 10l. And thereof he bringeth suit, &c.

Declaration of a precedent term, in debt on a bond against the administrator of the obligor.
1 Vent. 354.
Vide 2 R.
Raym. 1510.
3 D. A. 381.
p. 6.
2 Ven. 84.
1 Sid. 228.
Hil. 32 & 33
Car. II. Rot.
45.
Profert.

And now at this day, to wit, on the octave of *St. Hilary* in this same term, to which day the said *R.* had leave to imparl to the said original writ, and then to answer, &c. came as well the said *J.* by his said attorney, as the said *R. B.* by *W. B.* his attorney, and the said *R.* defendeth the wrong and injury when, &c. and saith that the said *J. P.* ought not to have or maintain his said action thereupon against him; because he saith, that by a certain indenture made at *H.* in the county aforesaid, on the 12th day of *February* in the 28th year of the reign of our sovereign lord *Charles the II.* now king of *England*, &c. between the said *R. B.* by the name of *R. B.* of the city of *L.* pewterer, of the one part, and the said *W.* by the name of *W. P.* of *R.* in the county of *E.* yeoman, of the other part, The counterpart of which sealed with the seal of the said *W.* bearing date the same day

Impar lance.

Plea, intestate indebted to defendant in 110l. for rent on a lease.

Profert in cur,

day and year, the said *R.* bringeth here into court, it is witnessed, that the said *R.* for and in consideration of the yearly rent and covenants in the same reserved, and mentioned to be paid, done and performed, on the part and behalf of the said *P. W.* his executors, administrators and assigns, as in the same is expressed, and for other good considerations the said *R. B.* thereunto moving, had demised, granted, and to farm let, and by the said indenture did demise, grant, and to farm let, to the said *W.* all that messuage or farm-house called *Hunter's-farm*, otherwise *Hunter's-hall*, situate and being in the parish of *Epping* in the county of *Essex*, with all and singular the houses, out-houses, buildings, barns, stables, yards, orchards, and gardens thereunto belonging; Except and always reserved out of the said lease to the said *R.* his heirs and assigns, a room in the said messuage called the parlour, and also a room or chamber over the same, with free liberty of ingress, egress and regress, to and for him and them, his and their servants and assigns, into, out of and from the said rooms, at his and their free-will and pleasure, during the said term; and also except and always reserved to the said *R.* his heirs and assigns, all and all manner of woods, underwoods, timber-trees, and all other trees whatsoever, and the lops, tops and shreddings of them and every of them; and all hedge-rows standing, growing or being, or which at any time after during the said term by the said indenture granted should stand, grow or be in or upon the said demised premises, or any part or parcel thereof, with free liberty of ingress, egress and regress, to and for the said *R.* his heirs and assigns, with servants, labourers, horses, carts and carriages, at times convenient in the year to fell, cut down, grub up, square and saw the same, at his and their free-will and pleasure, leaving and allowing wood and timber for botes and fire-wood: To have and to hold the said messuage or farm, lands and premises, in the said indenture before mentioned to be demised and granted, with their and every of their appurtenances, (except as before excepted) to the said *W.* his executors, administrators and assigns, from the feast-day of the annunciation of the blessed virgin *Mary* then next ensuing the date of the said indenture, unto the full end and term of seven years thence next ensuing, and fully to be complete and ended: Yielding and paying therefore yearly and every year, during the said term, to the said *R.* his heirs or assigns, the yearly rent or sum of 44*l.* of lawful money of *England*, at the two most usual feasts or days of payment in the year, *to wit*, at the feast of *St. Michael* the archangel, and the annunciation of the blessed

blessed virgin *Mary*, by equal portions; as by the said
 indenture, among other things, more fully appeareth.
 By virtue of which said lease the said *W.* afterwards, *to wit*,
 on the morrow of the said feast of the annunciation
 of the blessed virgin *Mary* next after the date of the said
 indenture, entered into the said demised premisses, with
 the appurtenances, and was possessed thereof, and had,
 held, occupied and enjoyed the said demised premisses,
 from the said feast of the annunciation of the blessed
 virgin *Mary* last mentioned, until and after the feast of
 St. *Michael* the archangel in the 30th year of the reign of
 our said lord the present king; and afterwards, *to wit*,
 on the 23d day of *December* in the 30th year aforesaid,
 being so possessed thereof, at *H.* aforesaid in the county
 aforesaid, died intestate: After whose death, *to wit*, on
 the last day of *February* in the 31st year of the reign of
 our said lord the present king, at *H.* aforesaid in the
 county aforesaid, administration of all and singular the
 goods and chattels, rights and credits, which were of
 the said *W.* was in due manner committed by *H.* by di-
 vine permission bishop of *London*, to the said *R.* And the
 said *R.* in fact saith, that at the said feast of St. *Michael*
 last mentioned, 110*l.* of rent for the said premisses were
 due and in arrear to the said *R.* and were unpaid at the
 time of the death of the said *W.* and that he the said *W.*
 upon the said feast of St. *Michael*, or at any time after-
 wards, did not pay the said 110*l.* or any part thereof,
 nor cause the same or any part thereof to be paid to the
 said *R.* And the said *R.* further saith, that the said *W. P.*
 in his life-time, *to wit*, on the 12th day of *February* in
 the 28th year of the reign of our said sovereign lord
Charles II. now king of *England*, &c. at *H.* aforesaid in
 the county aforesaid, by his writing obligatory sealed
 with the seal of the said *W.* Which the said *R.* bringeth
 here into court, the date whereof is on the same day and
 year, became held and bound to the said *R.* in 100*l.* of
 lawful money of *England*, to be paid to the said *R.* when
 he should be thereunto afterwards requested. And that
 the said *R.* further saith, that as well the said 110*l.* for
 the rent aforesaid, as the said 110*l.* mentioned in the said
 writing obligatory, at the time of the death of the
 said *W.* and after his death, were true and just debts,
 and truly and justly due to the said *R.* and then and
 still unpaid to the said *R.* And that divers goods and
 chattels which were of the said *W.* at the time of his
 death, to the value of 64*l.* 17*s.* and 6*d.* and no more, after
 the death of the said *W.* came to the hands of the said
R. as

Intestate in-
 debted to de-
 fendant on a
 bond in 100*l.*

Profert.

Assets only to
 64*l.* 17*s.* 6*d.*

Which defendant retains.
See Andrews
305, 328.
Plene administravit,

W. P. (the intestate) named in the indenture and bond, and W. P. named in the declaration, are the same person. Replication, Oyer of the bond and condition. Bond conditioned for performance of the covenants in the lease.

Protestando that the assets are above the value of 64l. 17s. 6d. And that defendant hath assets sufficient, &c.

R. as administrator as aforesaid: *Which* said goods and chattels the said R. retaineth in his own hands, in satisfaction of the said debts due to the said R. by the said W. in his life-time, in form aforesaid. And the said R. further saith, that he hath fully administered all the goods and chattels which were of the said W. at the time of his death in the hands of the said R. to be administered; and that, he hath no goods and chattels which were of the said W. at the time of his death in his hands to be administered, nor had on the day of exhibiting the said bill, nor at any time afterwards, except goods and chattels to the value aforesaid, which are not sufficient to satisfy the said debts, and which are bound and charged with the payment of the said several debts, and this he is ready to verify: Wherefore he prayeth judgment if the said J. ought to have or maintain his said action thereupon against him, &c. *With this*, that the said R. will verify that the said W. P. in the said indenture and writing obligatory named, and the said W. P. in the declaration of the said J. named, are one and the same person, and not other nor different.

And the said J. prayeth oyer of the said writing obligatory, and it is read to him; and he also prayeth oyer of the condition of the said writing obligatory, and it is read to him in these words, *to wit*, The condition of this obligation is such, that if the above-bounden W. P. his heirs, executors, administrators and assigns, do and shall from time to time, and at all times hereafter, well and truly pay, observe, perform, fulfil, hold and keep all and singular the covenants, grants, articles, provisoes, promises, conditions and agreements, which in his and their parts and behalf are and ought to be paid, observed, performed, fulfilled, held and kept, comprized, specified and declared, in and by one pair of indentures of lease bearing the date above written, made between the above-named R. B. of the one part, and the said W. P. of the other part, and that in and by all other things, according to the tenor, effect and true meaning of the same indentures of lease; then this obligation shall be void, or else it shall stand in full force; Which being read and heard, the said J. saith, that he by any thing by the said R. above by pleading alledged, ought not to be barred from having his said action thereupon against him; *Because protesting*, that the goods and chattels which were the goods and chattels of the said W. at the time of his death and came to the hands of the said R. to be administered, were of greater value than the sum of 64l. 17s. and 6d. And also protesting, that he

the said *R.* had divers goods and chattels, which were the goods and chattels of the said *W.* at the time of his death, sufficient to satisfy the said *J.* his said debt, and also to satisfy the said *R.* as much money and more as was due to the said *R.* by the said *W.* in his life-time; For plea, the said *J.* saith, that the said indenture in the said plea above mentioned, is the same indenture which is mentioned in the condition of the said writing obligatory. And the said *J.* further saith, that the said *W.* at the time of his death was not indebted to the said *R.* for the said rent in the said plea of the said *R.* above mentioned, above the sum of 30*l.* and this he is ready to verify: Wherefore he prayeth judgment, and his said debt, together with his damages by occasion of the retaining that debt, to be adjudged to him, &c.

And the said *R.* saith, that the said plea of the said *J.* above by replying pleaded, in manner and form aforesaid, and the matter therein contained, are not sufficient in law to maintain the said action of the said *J.* against the said *R.* To which the said *R.* hath no need, neither is he bound by the law of the land in any manner to answer; and this he is ready to verify: Wherefore for default of a sufficient replication in this behalf, the said *R.* as before prayeth judgment, and that the said *J.* may be barred from having his said action thereupon against the said *R.* &c. And for cause of demurrer in law upon the said plea, the said *R.* according to the form of the statute in such case made and provided, declareth, and to the court here sheweth these causes following, *to wit*, that the said plea is double and uncertain, and for that the said plea wanteth form, &c.

And the said *J.* saith, that the said plea of the said *J.* above by replying pleaded in manner and form aforesaid, and the matter therein contained, are good and sufficient in law to maintain the said action of the said *J.* against the said *R.* which said plea, and the matter therein contained, the said *J.* is ready to verify and prove as the court, &c. And because the said *R.* doth not answer the said plea, nor hath as yet any ways denied it, the said *J.* as before prayeth judgment, and his said debt, together with his damages by occasion of the retaining that debt to be adjudged to him, &c. But because the court of our said lord the present king here is not advised of giving their judgment of and upon the premises, day is thereupon given to the said parties before our lord the king at *W.* until *Wednesday* next after seven days of *Easter*, to hear their judgment of and upon the premises, for that the court of our said lord the present king here is not yet, &c. At which day, before

Says the indenture mentioned in the plea, and in the condition of the bond, are the same; and that the intestate was not indebted to the defendant for rent in above 30*l.*

Demurrer.

Joinder.

Continuance by Cur. advifar. vult.

Continuance.

before our said lord the king at *W.* the said parties came by their attornies aforesaid. But because the court of our said lord the present king here is not yet advised of giving their judgment of and upon the premisses, day is therefore given to the said parties before our lord the king at *W.* until *Friday* next after the morrow of the *Holy Trinity*, to hear their judgment thereupon, for that the court of our said lord the present king here is not yet, &c. At which day, before our lord the king at *W.*

Continuance.

the said parties come by their attornies aforesaid. But because the court of our said lord the present king here is not yet advised of giving their judgment of and upon the premisses, day is therefore given to the said parties before our lord the king at *W.* until *Tuesday* next after three weeks of *St. Michael*, to hear their judgment thereupon, for that the court of our said lord the present king here is not yet, &c. At which day, before our lord the king at *W.* the said parties came by their attornies aforesaid.

Judgment for the plaintiff.

Whereupon the court having seen and fully understood all and singular the premisses, and having maturely deliberated thereupon, for that it appeareth to the court of our said lord the present king here, that the said plea of the said *J.* above by replying pleaded in manner and form aforesaid, and the matter therein contained, are good and sufficient in law for the said *J.* to have and maintain his said action against the said *R.* It is considered, that the said *J. P.* recover against the said *R. B.* his said debt, and also 6l. 13s. and 4d. for his damages, which he hath sustained as well by occasion of detaining that debt, as for his costs and charges by him expended about his suit in this behalf, adjudged to the said *J.* by the court of our said lord the present king here with his assent, to be levied of the goods and chattels which were of the said *W. P.* at the time of his death in the hands of the said *R.* to be administered, if he hath much in his hands, and if he hath not so much in his hands; then the said damages to be levied of the proper goods and chattels of the said *R.* And the said *R.* in mercy, &c. *Afterwards to wit*, on *Monday* next after fifteen days of *St. Martin* in this same term, before our lord the king at *W.* the said *J. P.* came by *J. L.* his attorney and acknowledged himself to be satisfied of the said debt and damages: Therefore the said *R.* is quit of the said debt and damages, &c.

Pro mis. 6l.
13s. and 4d.
4 Nov. 1681.

Satisfaction acknowledged.

Declaration in
debt by baron
and feme a-
gainst baron

London, to wit, *H. P.* clerk, and *M.* his wife, late called *M. B.* complain of *P. L.* esq; and *E.* his wife, executrix of the testament and last will of *A. C.* late father

of the said E. deceased, otherwise called, &c. in the custody of the marshal, &c. of a plea, that they render to them 200l. which they unjustly detain from them; For that to wit, that *whereas* the said A. in his life-time, *to wit*, on the 1st day of *December* in the year of our Lord 1674. at L. aforesaid, *to wit*, in the parish of *St. Mary le Bow* in the ward of *Cheap*, by his certain writing obligatory sealed with the seal of the said A. in his life-time, And to the court of the said lady the queen now here shewn, the date whereof is on the same day and year, bound himself, his heirs, executors and administrators, in the penal sum of 200l. of lawful money of *England*, to pay to the said M. (by the name of Mrs. M. B. daughter of F. B. of L. aforesaid, and of M. his wife) the sum of 20l. a year, by equal portions, at or upon the four most usual feast-days in the year, *to wit*, on the nativity of our Saviour, the annunciation of the virgin *Mary*, the feast-day of *St. John* the baptist, and the feast of *St. Michael* the archangel, by 5l. for every quarter of a year; the first payment to begin upon the feast of *St. John* the Baptist next ensuing the date of the said writing; which said sum of 20l. should be paid at the then dwelling-house of the said F. B. father of the said M. for the term of six years next ensuing the first payment, if the said M. the now plaintiff should live so long. And the said H. and M. in fact say, that 5l. for one quarter of one year ended at the feast of *St. Michael* the archangel in the year of our Lord 1679. were due, in arrear and unpaid by the said A. in his life-time to the said M. the now plaintiff while she was sole, and still are due, in arrear and unpaid: *Whereby* an action accrued to the said M. while she was sole, to demand and have of the said A. C. in his life-time, and also to the said H. and M. after the marriage between them celebrated, to demand and have of the said P. and E. after the death of the said A. the said 200l. Yet the said A. in his life-time, and whilst the said M. was sole, altho' often requested, &c. thereunto by the said M. and the said P. and E. after the death of the said A. altho' often requested, &c. thereunto by the said M. whilst she was sole, and by the said H. and M. after the marriage between them celebrated, have not paid, nor hath either of them paid the said 200l. to the said M. whilst she was sole, or to the said H. and M. or to either of them, after the marriage between them celebrated, but they intirely refused, and the said P. and E. still intirely refuse to pay them the same, to the damage of the said H. and M. of 40l. And thereof they bring suit, &c.

and feme executrix, on a bill made by the testator to the feme while sole, for the payment of 20l. per annum. See 2 Salk. 749. Proferet.

One quarter due.

Actio accrevit.

Cumberland,

Declaration in
debt on a bond
against the heir
and devisee of
the obligor.

Cumberland, to wit, *R. W.* late of, &c. son and heir of *W. W.* deceased, otherwise called, &c. and *B. W.* late of the same, widow, devisee of the said *W.* of divers of his lands and tenements, were summoned to answer to *E. S.* esq; in a plea, that they render to the said *E.* 100*l.* which they owe to and unjustly detain from him, &c. And whereupon the said *E.* by *T. B.* his attorney saith, that *Whereas* the said *W.* the father of the said *R.* (of whom the said *R.* is son and heir, and the said *B.* is devisee as aforesaid) in his life-time, to wit, on the 2d day of *September* in the 6th year of the reign of his present majesty, at *W.* aforesaid, by a certain writing obligatory acknowledged himself to be bound to the said *E.* in 100*l.* to be paid to the said *E.* when he the said *W.* should be thereunto required; and the said *W.* did by the said writing obligatory bind himself and his heirs well and faithfully to make said payment: *Nevertheless* the said *W.* in his life-time, or the said *R.* and *B.* (which said *R.* is son and heir of the said *W.* and which said *B.* is devisee of the said *W.* of divers of his lands and tenements as aforesaid, by his last will made at *W.* aforesaid, after the 25th day of *March* in the year of our Lord 1692. whereof the said *W.* at the time of his decease had a power of disposing by his said last will) after the death of the said *W.* (altho' often requested) have not, nor hath any of them rendered to the said *E.* the said 100*l.* or any part thereof; but they have wholly denied, and the said *R.* and *B.* still do deny to render the same to the said *E.* Whereby the said *E.* saith that he is prejudiced and damnified to the value of 10*l.* And thereof he bringeth suit, &c. And he bringeth here into court the said writing obligatory, which testifieth the debt aforesaid in form aforesaid, the date whereof is the day and year in that respect above-mentioned, &c.

Profert.

Judgment by
Nil dicit a-
gainst the heir.

And the aforesaid *R.* in his own proper person cometh and defendeth the force and injury when, &c. and saith nothing in bar or preclusion of the aforesaid action of the aforesaid *E.* whereby the said *E.* remaineth against the said *R.* thereof undefended: Therefore it is considered, that the said *E.* recover against the said *R.* his debt aforesaid, and his damages by reason of detaining that debt to 80*s.* by the court here adjudged to the said *E.* by his assent, according to the form of the statute in such case made and provided. And the said *R.* in mercy, &c.

Plea, not de-
visee.

And the said *B.* by ——— her attorney cometh and defendeth the force and injury when, &c. and saith that she ought not to be charged with the said debt by virtue of

of the said writing obligatory, because she saith; that she is not devisee of the said *W.* of any of his lands and tenements, as by the said declaration is above supposed: And of this she putteth herself upon the country, &c.

Of Easter term in the sixteenth year of the reign of king George the third.

To the justices of our lord the king of the bench.

Middlesex, H. B. spinster, by *J. S.* her attorney come to wit, plaineth of *H. V.* esq; otherwise called, &c. (he having privilege of parliament) of a plea, that he render to her [*as in a bill* against an attorney in debt on a bond to*] bringeth suit, &c. And hereupon the said *H.* prayeth process of the lord the king, according to the form of the statute in such case made and provided, to be made to her thereupon: And it is thereupon granted to her, &c. And she bringeth here into court the writing obligatory aforesaid, which testifieth the debt aforesaid in form aforesaid, the date whereof is the day and year aforesaid, &c.

Bill in debt on a bond against a member of parliament.
Lil. Ent. 501.
2 Ld. Raym. 1442.
2 Strange 734.
Process prayed.
Stat. 8 & 9.
W. 3.
Stat. 12 & 13
W. 3. c. 3.
Profert of the bond.

Pledges of prosecuting

{ J. D.
and
R. R.

GEORGE the third, &c. To the sheriff of *M.* greeting. We command you, that you summon *H. V.* esq; otherwise called, &c. (the said *H. V.* having privilege of parliament) that he be before our justices at *W.* on *Monday* next after the morrow of the ascension of our Lord, to answer to *H. B.* spinster, of a plea that he render to her 84ol. which he oweth to her and unjustly detaineth, &c. for that whereas [*Verbatim as in the bill to*] the damage of the said *H.* of 20l. as it said: And have you there this writ. Witness, &c.

Writ of summons thereon.
Lil. Ent. 501.
670.

GEORGE the third, &c. To the sheriff of *M.* greeting. We command you, that you distrain and attach *H. V.* esq; otherwise called, &c. (the said *H. V.* having

Distringas thereon.
Lil. Ent. 569.

* It seems prudent to omit these words of course in such bill, viz.
"But contriving and fraudulently intending craftily and subtilly to deceive and defraud."

having privilege of parliament) by all his lands and chattels in your bailiwick, so that neither he nor any one through him put his hands thereon until you shall have other command from us; and that of the issues thereof you answer to us, so that he be before our justices at *W.* on *Friday* next after the morrow of the *Holy Trinity*, to answer to *H. B.* spinster, of a plea that he render to her 84*ol.* which he oweth to her, and unjustly detaineth from her, &c. For that whereas [*Verbatim as in the bill to*] damage of the said *H.* of 2*ol.* as it is said, and to hear his judgment for many defaults: And have you there this writ. Witness, &c.

Declaration of
a precedent
term, in debt
on a bond a-
gainst the exe-
cutors of the
obligor. See
Carth. 11.
3 Mod. 114.

Profert.

Elsewhere, as it appears of the term of the *Holy Trinity*, in the second year of the reign of king *James II.* on the 121*st* roll, it is thus contained: *Cheshire*, to wit, *T. H.* and *T. H.* late executors of the testament and last will of *E. H.* deceased, lately called *E. H.* of the town aforesaid, in the county of *C.* tanner, was summoned to answer *G. J.* of a plea that they render to him 4*ol.* of lawful money of *England*, which they owe him and unjustly detain; For that, that is to say, that whereas the said *E.* in his life-time, that is to say, on the 11*th* day of *December* in the 34*th* year of the reign of the lord *Charles II.* late king of *England*, &c. at *T.* in the county aforesaid, by his certain writing obligatory sealed with the seal of the said *E.* in his life-time, and to the court of our said lord the now king here shewn, the date whereof is on the same day and year, acknowledged him to be held and firmly bound to the said *G.* in the said 4*ol.* to be paid to the said *G.* when he should be thereunto requested: *Nevertheless* the said *E.* in his life-time, and the said *T.* and *T.* after the death of the said *E.* altho' often requested, &c. have not paid the said 4*ol.* to the said *G.* but hitherto to pay him the same have intirely refused, and the said *T.* and *T.* still wholly refuse to pay him the same, and unjustly detain, to the damage of the said *G.* of 100*s.* And thereof he bringeth suit, &c.

Impar lance.

And now at this day, that is to say, on the morrow of the *Holy Trinity* in this same term, to which day the said *T.* and *T.* had leave to imparle, and then to answer before our lord the king at *W.* come as well the said *G.* by his attorney aforesaid, as the said *T.* and *T.* by *M. J.* their attorney; And the said *T.* and *T.* defend the wrong and injury when, &c. and say, that the said *G.* ought not to have or maintain his said action thereof against them, because they say, that they the said *T.* and *T.* before the day of issuing the said original writ, had fully administered all the goods and chattels which were of the

Plea, Plene ad-
ministravit.

the said *E. H.* at the time of his death; and that they have goods and chattels which were of the said *E. H.* at the time of his death in their hands to be administered, nor had they on the day of issuing the said original writ, nor at any time afterwards; this they are ready to verify: Wherefore they pray judgment, if the said *G.* ought to have or maintain his said action thereof against them, &c.

And the said *G.* saith, that he by any thing by the said *T.* and *T.* above in pleading alledged, ought not to be precluded from his said action thereof against the said

Replication.

T. and *T.* because he saith that the said *T.* and *T.* have, and on the day of issuing the said original writ, that is to say, on the 21st day of *April* in the 2d year of the reign of our lord *James II.* now king of *England*, &c. had divers goods and chattels which were of the said *E. H.* at the time of his death in their hands to be administered, to the value of the debt aforesaid, whereof they could have satisfied the said *G.* for his debt aforesaid, to wit, at *T.* in the county aforesaid; and he prayeth that this may be inquired of by the country: And the said *T.* and *T.* do the like, &c. And because the said issue above joined between the said parties ought to be tried by men of the county palatine of *C.* that is to say, by men of the neighbourhood of *T.* aforesaid in the said county of *C.* where the writ of our lord the king runneth not, and not elsewhere; therefore the record of the said plaint is sent to the justices of the said lord the king of the said county of *C.* so that the said justices, by writ of our said lord the king of that county to be duly made, cause it to be commanded to the sheriff of the same county, that he cause to come before the said justices of our said lord the king of the said county of *C.* at the next sessions for the said county after the said record shall be delivered to them, twelve free and lawful men of the neighbourhood of *T.* aforesaid in the said county of *C.* By whom, &c. And who neither, &c. To recognize, &c. Because as well, &c. when the verification and issue aforesaid shall be made and tried, that then the said justices send to our lord the king at *W.* the record of the said plaint, with the whole thereof which shall be done thereupon in the court of our said lord the king there before them, at a certain day which the said justices of the county palatine aforesaid in the same court there shall prefix to the said parties, to hear judgment thereupon, &c. And it is told to the said *G.* that he sue with effect at his peril, &c.

Issue.

Mittimus to the county palatine.

Declaration in
debt on a bail-
bond.

See Stra. 60,
444, 643.
2 Stra. 727,
893.

Middlesex, to wit, *C. B.* late of the *Inner Temple*, *London*, gent. othrewise called *C. B.* of the *Inner Temple*, *London*, gent. was summoned to answer *A. C.* assignee of Sir *R. H.* knt. and *E. B.* esq; late sheriff of the said county of *M.* according to the form of the statute in such case lately made and provided, of a plea that he render to her 20*l.* which he oweth her and unjustly detaineth, &c. And whereupon the said *A. C.* by *J. B.* her attorney saith, that *whereas* one *W. L.* after the first day of the term of the *Holy Trinity* in the year of our Lord 1706, *to wit*, on the 4th day of *April* in the 10th year of the reign of our lord the present king, at *W.* in the said county of *M.* was in due manner arrested by the said Sir *R. H.* and *E. B.* (being sheriff of the said county of *M.*) by virtue of a certain writ of our lord the present king of *Capias ad respondendum*, directed to the sheriff of the county of *M.* and out of the court of our said lord the present king (the same being then here, *to wit*, at *Westminster* in the county of *M.*) before that time in due manner issued, and returnable here from the day of *Easter* in fifteen days then next ensuing, at the suit of the said *A. C.* of a plea of trespass, and also in a certain plea of debt upon demand 10*l.* And *whereas* the said Sir *R. H.* and *E. B.* (being sheriff of the county of *M.* aforesaid) took bail from the said *W. L.* of and upon the said arrest for his appearance, according to the tenor of the said writ, *to wit*, the said *W. L.* one *W. B.* and the said *C. B.* (as bail for the said *W. L.*) on the said 4th day of *April* in the said 10th year of the reign of our said lord the present king, at *W.* aforesaid, by their certain writing obligatory *jointly and severally* allowed themselves to be held and firmly bound to the said Sir *R. H.* and *E. B.* (being sheriff of the said county of *M.*) by the name of Sir *R. H.* and *E. B.* sheriff of the said county of *M.* in the said 20*l.* to be paid to the said sheriff or his assigns, when they the said *W. L.* *W. B.* and *C. B.* or either of them, should be thereunto requested, with a condition to the said writing obligatory underwritten, that if he the said *W. L.* should appear before the justices of our said lord the king at *W.* from the day of *Easter* in fifteen days to answer to the said *A. C.* of a plea of trespass, and also in a certain plea of debt upon demand 10*l.* that then the said obligation should be void and of no force, otherwise it should stand and remain in its full strength, force and effect, as by the said writing obligatory, and the condition thereof (relation being thereunto had) may more fully appear. And the said *A. C.* in fact saith, that the said *W. L.* did not appear before the

the justices of our said lord the present king here, to wit, at *W.* aforesaid, from the day of *Easter* in fifteen days, in the said condition mentioned, according to the form and effect of that condition, by reason whereof the said writing obligatory became forfeited. And the said *A. C.* in fact saith, that afterwards, to wit, on the 19th day of *May* in the year of our Lord 1774, at *W.* aforesaid, the said Sir *R. H.* and *E. B.* (being sheriff of the said county of *M.*) by the name of Sir *R. H. Knt.* and *E. B. esq;* sheriff of the county of *M.* within named, at the request of the said *A. C.* the plaintiff in that suit, by his indorsement in due manner assigned the said writing obligatory to the said *A. C.* according to the form of the statute in such case made and provided, by then and there indorsing the said writing obligatory, and attesting to the same under his hand and the seal of his office of sheriff of the county of *M.* aforesaid, in the presence of two credible witnesses, to wit, of *C. T.* and *J. C.* according to the form of the said statute, the said 20*l.* in the said writing obligatory contained then and there being unpaid, whereof the said *C. B.* then and there had notice; whereby and by force of the premises, and also by force of the said statute, an action accrued to the said *A. C.* as assignee of the said Sir *R. H.* and *E. B.* sheriff of the said county of *M.* to demand and have of the said *C. B.* the said 20*l.* Yet the said *C. B.* altho' often required, hath not yet rendered the said 20*l.* to the said Sir *R. H.* and *E. B.* or to the said *A. C.* or either of them, but hath hitherto altogether refused to render the same to them or to either, and yet doth refuse to render the same to the said *A. C.* and the said 20*l.* still remain unpaid: Wherefore she saith she is the worse, and hath damage to the value of 10*l.* And thereof she bringeth suit, &c. And she bringeth here into court as well the said writing obligatory which testifieth the said debt in form aforesaid, the date whereof is the 4th day of *April* in the said 10th year of the reign of our said lord the present king, as the said indorsed writing thereupon, the date whereof is the said 19th day of *May* in the year of our Lord 1774. aforesaid, whereby the said *A. C.* sufficiently appeareth to the court here to be assignee of the said sheriff of the debt and writing obligatory aforesaid; and thereof to have her said action, &c.

Proferre.

Elsewhere, as it appears of the term of the *Holy Trinity*, in the 13th year of the reign of king *George III.* on the roll, it is thus contained, *Suffex*, to wit, *E. A.* late of widow, administratrix of all and singular the goods and chattels, rights

Declaration of a precedent term in debt for rent, upon articles against an administratrix. Salk. 325.

Carth. 511.
 12 Mod. 288.
 Vide 2 R.
 Raym. 1510.
 3 D. A. 381.
 p. 6.
 2 Vent. 84.
 1 Sid. 228.

Profert.

Habendum.

Reddendum.

Testator entered.

Rent accrued.

Action accrevit.

Administration committed to defendant.

and credits, which were of *J. A.* gent. deceased, who died intestate, lately called *J. A.* of *R.* otherwise *E.* in the county aforesaid, was summoned to answer *H. G.* esq; of a plea, that she render to him 60*l.* of lawful money of *Great-Britain*, which she unjustly detaineth from him; *For that*, to wit, that *whereas* by a certain writing of articles made at *H.* in the county aforesaid, on the 11th day of *January* in the year of our Lord 1761, between the said *H.* by the name of *H. G.* of *B.* within the parish of *E. G.* in the county of *S.* esq; of the one part, and the said *J.* by the name of *J. A.* of *R.* otherwise *E.* in the county aforesaid, gent. of the other part; *The* counterpart whereof, sealed with the seal of the said *J.* the said *H.* bringeth here into court, bearing date the same day and year, the said *H.* demised to the said *J. A.* all those two several pieces or parcels of land called the *Deans*, containing by estimation 22 acres, with the appurtenances, in *H.* aforesaid in the county aforesaid; and also all those four pieces of marshland called *H. marsh*, containing by estimation 32 acres, with the appurtenances, in *H.* aforesaid: *To hold* to the said *J. A.* his executors and administrators, from the feast of the birth of our Lord then last past for eleven years, *At* and under the yearly rent of 30*l.* To be paid half-yearly during the said term, *to wit*, at the feast of *St. John* the baptist, and the birth of our Lord, by equal portions, or within one and twenty days after the said feasts, as by the said writing more more fully appeareth. *By virtue* of which said demise the said *J. A.* entered into the said premisses, with the appurtenances, and was possessed thereof until and on the feast of the birth of our Lord in the year of our Lord 1776, and by 21 days thence next ensuing. *And* 60*l.* of the said rent for two years ended at the said feast of the birth of our Lord in the year 1775, and by 21 days thence next ensuing, were in arrear in the life of the said *J.* and are still unpaid: *Whereby* an action accrued to the said *H.* to demand and have of the said *J.* in his life-time, and of the said *E.* after the death of the said *J.* (*To which* said *E.* administration of all and singular the goods and chattels, rights and credits, which were of the said *J.* at the time of his death, after his death was committed at *H.* aforesaid in the county aforesaid) the said 60*l.* *Yet* the said *J.* in his life-time, and the said *E.* after his death, altho' often requested, &c. have not yet paid the said 60*l.* to the said *H.* but they have hitherto intirely refused, and the said *E.* still refuseth to pay him the same.

to the damage of the said *H.* of 20*l.* And thereof he bringeth suit, &c.

And now at this day, *to wit*, on the octave of St. Hilary Imparlance:

in this same term, until which day the said *E.* had licence to imparl to the said original bill, and then to answer, &c. come as well the said *H. G.* by his said attorney, as the said *E.* by *J. L.* her attorney; And the said *E.* defendeth the force and injury when, &c. And as to 30*l.* parcel of the said 60*l.* in the said declaration mentioned to be in arrear, of the said rent for the first year of the said two years, the said *E.* saith that she doth not detain from the said *H.* the said 30*l.* nor any parcel thereof, in manner and form as the said *H.* above complaineth against her; and of this she putteth herself upon the country:

And the said *H.* doth so likewise, &c. And as to the other 30*l.* residue of the said 60*l.* the said *E.* saith, that the said *H. G.* ought not to have or maintain his said action thereupon against her, because she saith, that in the life-time of the said *J.* and whilst she the said *E.* was sole, *to wit*, on the 20th January in the year of our Lord 1758. at *H.* aforesaid in the county aforesaid, he the said *J. A.* by the name of *J. A.* of *R.* in the county of *S.* gent. by his certain writing obligatory sealed with the seal of the said *J.* And to the court of our said lord the king now here shewn, bearing date the said 20th day of January in the year of our Lord 1758 aforesaid, acknowledged himself to be held and firmly bound to the said *E.* whilst she was sole, then by the name of *E. R.* of *R.* in the county aforesaid, spinster, in 2000*l.* of lawful money of Great Britain, to be paid to the said *E.* when he should be afterwards thereunto required, with a condition to the said writing obligatory underwritten, reciting, that whereas a marriage was by the blessing of God in a short time to be solemnized between the said *J. A.* and her the said *E.* so that if the said *E.* should survive the said *J.* and that the said *J.* should die before the said *E.* then if the said *J. A.* should leave, or if his heirs, executors or assigns should well and truly pay, or cause to be paid to the said *E.* her executors, administrators or assigns, the full and intire sum of 1000*l.* of lawful money of Great Britain, within one month after the death of the said *J. A.* without fraud or deceit, that then the said obligation should be void, otherwise to stand and remain in its full force and virtue; as by the said writing obligatory, and the condition of the same writing obligatory, brought here into court, more fully appeareth. And the said *E.* further saith, that afterwards, *to wit*, on the 1st day of March in the said year of our Lord 1758, at *H.* aforesaid

As to part,
Non detinet.

Issue.

As to the residue, a bond entered into by the intestate to the defendant before their marriage to leave her 1000*l.* at his death.

Profert.

Defendant and intestate intermarried.

He died,

and did not
leave her 1000l.

Administration
granted to de-
fendant.

Pract. Reg.
37, 43.

Assets to 230l.

Which she re-
tains.

No other assets.

Bond in force.

Obligor and in-
testate the same
person.

aforesaid in the county aforesaid, she the said *E.* married with the said *J. A.* And afterwards, and before the day of suing out the writ of the said *H. to wit*, on the 1st day of *March* in the year of our Lord 1775, the said *J. A.* died intestate at *H.* aforesaid in the county aforesaid, and did not leave to the said *E.* the sum of 1000l. or any part thereof; and that at any time after the death of the said *J. A.* hitherto the sum of 1000l. or any part thereof, hath not been paid by the heirs or assigns of the said *J. A.* or any of them. And the said *E.* further saith, that after the death of the said *J. to wit*, on the 13th day of *March* in the year of our Lord 1775, at *H.* aforesaid in the county aforesaid, administration of all and singular the goods and chattels, rights and credits, which were of the said *J. A.* at the time of his death, who died intestate, was in due form of law committed to the said *E.* by *T. B.* doctor of laws, commissary or principal official lawfully appointed of the reverend father in God *John* by divine permission lord bishop of *Chichester*, and for the whole archdeaconry of *L.* in the diocese of *C.* aforesaid, to whom the committing the said administration of right belonged. After the committing which said administration, divers goods and chattels which were of the said *J.* at the time of his death, to the value of 230l. and not more, came to the hands of the said *E.* by virtue of the said administration, *to wit*, at *H.* aforesaid in the county aforesaid: Which said goods and chattels the said *E.* retaineth in her hands, in part of satisfaction of the said writing obligatory. And the said *E.* further saith, that on the day of suing out the said writ of the said *H.* or before that time, or at any time afterwards, there did not come to the hands of the said *E.* any other or more goods and chattels which were of the said *J.* at the time of his death, besides the said goods and chattels to the value of the said 230l. and not more, and which are not sufficient to satisfy to the said *E.* the said sum of 1000l. mentioned in the condition of the said writing obligatory; and this she is ready to verify: Wherefore she prayeth judgment if the said *H.* ought to have or maintain his said action thereupon against her, &c. With this, that the said *E.* will verify that the said writing obligatory still remaineth in its full force and effect, no ways annihilated or satisfied. And that the said *J. A.* in the said writing obligatory mentioned, and *J. A.* in the said declaration and plea mentioned, are one and the same person, and not other nor different.

Geo. Hill.

Ans.

And the said *H. G.* saith, that he by any thing by the said *E.* above in pleading alledged, ought not to be barred from having his said action thereupon against her the said *E.* because he saith that the said plea above pleaded by the said *E.* in manner and form aforesaid, and the matter therein contained, are not sufficient in law to bar the said *H.* from having his said action thereupon against the said *E.* To which said plea he the said *H.* hath no need, and is not bound by the law of the land in any manner to answer; and this he is ready to verify: Wherefore, for default of a sufficient answer in this behalf, the said *H.* prayeth judgment and his said debt, together with his damages by the occasion of detaining that debt, to be adjudged to him, &c. Demurrer.

And the said *E.* saith, that the said plea above pleaded by the said *E.* in manner and form aforesaid, and the matter therein contained, are good and sufficient in law to bar the said *H.* from having his said action thereupon against her the said *E.* which said plea, and the matter therein contained, the said *E.* is ready to verify and prove as the court, &c. And because the said *H.* doth not answer to the said plea, nor has as yet in any manner denied the same, she the said *E.* as before prays judgment, and that the said *H.* may be barred from having his said action thereupon against her, &c. Joinder.

But because the court of our said lord the king now here is not yet advised about giving judgment of and concerning the premisses, day is therefore given to the said parties to come before our lord the king at *W.* until fifteen days of *Easter*, to hear judgment of and upon the same premisses, for that the court of our said lord the king now here is not yet advised thereof. Continuance.

At which day before our lord the king at *W.* the said parties came by their attornies aforesaid. Continuance.

But because the court of our said lord the king now here is not advised about giving judgment of and concerning the premisses, day is therefore given to the said parties to come before our lord the king at *W.* until the morrow of the *Holy Trinity*, to hear judgment of and upon the same premisses, for that the court of our said lord the king now here is not advised thereof. Continuance.

At which day before our lord the king at *W.* the said parties came by their attornies aforesaid. Continuance.

But because, &c. [like continuances to *Michaelmas*, *Hilary*, *Easter*, *Trinity* and *Hilary Terms*.] *At which day* before our lord the king at *W.* the said parties come by their attornies aforesaid. Continuance.

Whereupon the court of our said lord the king now here having seen and fully understood all and singular the premisses, and having maturely deliberated Judgment for the defendant.

liberated

Judgment
signed, 21 Feb.
1778.

liberated thereupon, it appeared to the court of our said lord the king now here, that the said plea above pleaded by the said *E.* in manner and form aforesaid, and the matter therein contained, are good and sufficient in law to bar the said *H.* from having his said action against the said *E.* *Therefore it is considered,* that the said *H. G.* take nothing by his said writ, but that he be in the mercy of the court for his false clamour, &c. and that the said *E.* go thereof without day, &c. And it is further considered, that the said *E. A.* recover against the said *H. G.* 14l. 10s. for her costs and charges laid out by her about her defence in this behalf, adjudged to the said *E.* by the court of our said lord the king now here; by her assent, according to the form of the statute in such case made and provided; and that the said *E. A.* have execution thereof, &c.

Adjudged in this case, that the debt was only suspended, and not extinguished.

Declaration in
debt for rent
upon a lease
of a rectory,
tithes, &c.

Profert.

Middlesex, to wit, *F. O.* widow, complaineth of *T. O.* esq; and *H. H.* clerk, in the custody of the marshal, &c. of a plea that they render to her 84l. of lawful money of *England*, which they owe her and unjustly detain; *for that*, to wit, that *whereas* by a certain indenture made at the parish of *St. Clement Danes* in the said county of *M.* on the 26th day of *February* in the year of our Lord 1682. between the said *F. O.* widow, and relict of *G. O.* doctor of divinity, and late prebendary of the prebend of *L.* founded in the cathedral church of *L.* in the county of *S.* deceased, *M. O.* spinster, daughter of the said *G.* and *F. O. H. H.* of *R.* in the county of *W.* esq; and *J. O.* of the *Middle Temple, London*, esq; of the one part, and the said *T. O.* by the name of *T. O. of H.* in the said parish of *L.* esq; and the said *H. H.* by the name of *H. H.* vicar of *L.* aforesaid, and prebendary of *L.* aforesaid, of the other part; one part of which said indenture, sealed with the seals of the said *T.* and *H.* the said *F.* bringeth here into court, the date whereof is on the same day and year aforesaid; the said *F. M. H.* and *J.* for and in consideration of the rents and covenants expressed in the said indenture on the part of the said *T.* and *H.* to be performed, by the said indenture demised and to farm let to the said *T. O.* and *H. H.* all that prebend, rectory or parsonage of *L.* aforesaid, with all the tithes of corn and hay growing and renewing, or which at any time during the term by the said indenture demised should grow, arise and renew upon the same, situate, lying and being in the said county of *S.* and the said city and county

county of *L.* together with all rights, members, pensions, portions, profits, commodities and appurtenances, to the said prebend belonging or in any manner appertaining, together with all and all manner of houses, edifices and structures, yards, gardens, glebe lands, meadows, pastures, commons, chief-rents, reversions, services, tithes, tithings, fruits, oblations, obventions, emoluments, and all rights, properties, advantages and hereditaments whatsoever, to the said prebend belonging or appertaining (except the presentation and advowson of and to the vicarage of *L.* aforesaid, when and as often as the same should become vacant during the term in the said indenture granted); *To have* and to hold, perceive, receive and enjoy all the said prebend, rectory and parsonage, glebe lands, houses, meadows, pastures, commons, tithes, tithings, fruits, oblations, obventions, and all other the premisses whatsoever by the said indenture demised, with the appurtenances, (except before excepted) to the said *T. O.* and *H. H.* their executors, administrators and assigns, from the 30th day of *September* then last past before the date of the said indenture, for, during, and unto the full end and term of twenty years and the half of a year and five months thence next ensuing, and fully to be complete and ended: *Yielding* and paying therefore yearly and every year, during the first twenty years and the half of a year of the said term, to the said *F. O.* her executors, administrators and assigns, the sum or yearly rent of 42l. of lawful money of *England*, at the feasts of the annunciation of the blessed virgin *Mary* and *St. Michael* the archangel, by even and equal portions; the first payment to begin at the feast day of the annunciation of the blessed virgin *Mary* next ensuing the date of the said indenture: *And also yielding* and paying to the said *F. O.* her executors, administrators and assigns, for the last five months of the said term, the sum or rent of 21l. of like lawful money of *England*, upon the last day of the said term, without any deduction, defalcation or abatement to be made of any rent or rents of 16l. 13s. 4d. payable yearly to the prebendary of *L.* aforesaid, or the pension or pensions of 30l. payable yearly to the vicar choral stall of the said prebend, or the master of the works of the said cathedral church, or the yearly pension of 5l. 6s. and 8d. to the vicarage of *St. Mary* in *L.* or the pension or yearly rent of 8s. to the divinity-reader in the said cathedral church for the time being, or for tenths due to his majesty or his successors for the said prebend, or for any other sums of money due or to be due for procurations, fynodals,

Habendum.

Reddendum.

Defendants
entered.

Rent arrear.

Actio accrevit.

Plea, that the
plaintiff en-
tered into part
of the demised
premises before
any rent was
due.

Replication,
Non intravit.

synodals, or any other charges ordinary or extraordinary, which should be due or become due and issuing therefrom, or for repairs, or any other taxes, charges, assessments or incumbrances whatsoever, as by the said indenture amongst other things more fully appeareth. By virtue of which said demise the said *T. O.* and *H. H.* afterwards, *to wit*, on the 10th day of *March* in the year of our Lord 1682. entered into the said demised premises, with the appurtenances, and were and still are possessed thereof. And 84l. of the said rent for the said premises, for two years ended at the feast of the annunciation of the blessed virgin *May* last past, were in arrear to the said *F.* and still are in arrear and unpaid. Whereby an action accrued to the said *F.* to demand and have of the said *T. O.* and *H. H.* the said 84l. Yet the said *T. O.* and *H.* altho' often requested, &c. have not, nor hath either of them yet paid the said 84l. to the said *F.* but have hitherto intirely refused, and still do refuse to pay her the same, to the damage of the said *F.* of 100l. And thereof she bringeth suit, &c.

And the said *T. O.* and *H. H.* by ——— their attorney come and defend the force and injury when, &c. and say, that the said *F. O.* the present plaintiff, ought not to have or maintain her said action thereupon against them, because they say, that after the said demise of the said premises above specified in the said declaration, and before any rent became due and payable by the said demise to the said *F. O.* the present plaintiff, *to wit*, on the 20th day of *March* in the year of our Lord 1682. aforesaid, she the said *F. O.* the present plaintiff, with force and arms, &c. entered into a certain chamber called the great parlour, parcel of the parsonage-house parcel of the said premises, with the appurtenances, to the said *T. O.* and *H. H.* in form aforesaid above demised, and not excepted, in and upon the possession of the said *T. O.* and *H. H.* thereof, *to wit*, at *L.* aforesaid in the county of *S.* aforesaid, and ejected, expelled and amoved the said *T. O.* and *H. H.* from their possession thereof, and held out the said *T. O.* and *H. H.* so therefrom ejected, expelled and amoved from their said possession thereof, from thence until and after the said feast of the annunciation of the blessed virgin *Mary* in the said declaration last mentioned; and this they are ready to verify: Wherefore they pray judgment, if the said *F. O.* the present plaintiff, ought to have or maintain her said action thereupon against them, &c.

And the said *F.* saith, that she by any thing by the said *T.* and *H.* above in pleading alledged, ought not to be barred from having her said action thereupon against them,

them, because she saith, that she the said *F.* did not enter into the said chamber called the great parlour, parcel of the parsonage-house parcel of the said premisses, with the appurtenances, in form afore said demised to the said *T. O.* and *H. H.* nor did she eject, expel and amove them from the same, in manner and form as the said *T.* and *H.* above in pleading have alledged; and this she prayeth may be inquired of by the county. And the said *T.* and *H.* do so likewise, &c. Therefore it is commanded to the sheriff of the county of *S.* that he cause to come before our lord the king and lady the queen at *W.* on — next after — twelve, &c. of the neighbourhood of *L.* afore said, by whom, &c. To recognize, &c. Because as well, &c. The same day is given to the parties afore said at the same place, &c.

Issue.

Venire awarded to the sheriff of the county where the premisses lie.

Northamptonshire, to wit, R. R. the elder, late of the parish of *D.* in the county afore said, husbandman, was summoned to answer *E. F.* gent. of a plea, that he render to him 100l. which he oweth him and unjustly detaineth: And whereupon the said *E.* by *W. L.* his attorney saith, that *whereas* the said *E.* on the 29th day of *December* in the year of our Lord 1698, at the parish of *D.* afore said, demised and to farm let to the said *R.* one messuage and four yards of land, lying and being in the parish of *D.* afore said, and also one other yard of land lying and being, &c. with the appurtenances, except out of the said demise to the said *E. F.* all that little close of meadow called the *Good's close*, &c. To hold the said demised premisses, with the appurtenances, (except before excepted) to the said *R.* from thenceforth as long as it should please both the said parties: *Yielding* and paying therefore to the said *E.* as long as the said *R.* should hold and enjoy the said demised premisses, (except before excepted) after the rate of 50l. of lawful money of *England* by the year, to be paid at the two most usual feasts, *to wit*, the feasts of the annunciation of the blessed virgin *Mary* and of *St. Michael* the archangel, by even and equal portions. By *virtue* of which said demise the said *R.* entered into the said demised premisses with the appurtenances (except before excepted) and was possessed thereof, and continued possessed thereof, for one whole year thence next ensuing. And 50l. of the said rent, parcel of the said 100l. for the said one year ended at the said feast of *St. Michael* the archangel last past, were in arrear and still are in arrear and unpaid to the said *E.* Whereby an action hath accrued to the said *E.* to demand and have of the said *R.* the said 50l. parcel of the said 100l. Yet the said *R.* altho' often requested, &c. hath not yet rendered

Declaration in debt for rent on a lease at will.

Habendum.

Reddendum.

Defendant entered.

Rent arrear.

Actio accrevit.

Laid over
again.

Habendum.

Reddendum.

Defendant
entered.

Rent arrear.

Actio accrevit.

Declaration in
debt against an
executrix for
rent incurred
in her own
time.

Articles.

Profert.

Demise.

to the said *E.* the said 50*l.* parcel of the said 100*l.* but hath hitherto intirely refused, and still doth refuse to render the same to him. *And also whereas* the said *E. F.* on the said 29th day of *September* in the said year of our Lord 1698, at *D.* aforesaid, demised and to farm let to the said *R.* one other messuage, &c. with their appurtenances; *To have and to hold* the said last mentioned tenements with the appurtenances to the said *R.* from thenceforth as long as it should please both the said parties: *Yielding* and paying therefore to the said *E.* as long as the said *R.* should hold and enjoy the said last mentioned demised premisses, after the rate of 50*l.* of lawful money of *England* by the year, at the two most usual feasts, *to wit*, the feasts of the annunciation of the blessed virgin *Mary* and of *St. Michael* the archangel, by even and equal portions. By *virtue* of which said demise the said *R.* afterwards, *to wit*, on the 1st day of *October* in the said year of our Lord 1698, last mentioned, entered into the said demised premisses with the appurtenances, and was possessed thereof, and continued possessed thereof for one whole year thence next ensuing. *And* 50*l.* of the said rent, residue of the said 100*l.* for the said one year ended at the feast of *St. Michael* the archangel last past, were in arrear, and still are in arrear and unpaid to the said *E.* *Whereby* an action accrued to the said *E.* to demand and have of the said *R.* the said 50*l.* residue of the said 100*l.* *Yet* the said *R.* altho' often requested, &c. hath not yet rendered to the said *E.* the said 50*l.* residue of the said 100*l.* but hath hitherto intirely refused, and still doth refuse to render the same to him, to the damage of the said *E.* of 50*l.* and thereof he bringeth suit, &c.

Middlesex, to wit, *M. W.* late of *London*, widow, executrix of the testament and last will of *E. W.* of the parish of *St. Giles Cripplegate* in the county of *M.* grafier, was summoned to answer *H. T.* of a plea, that she render to him 36*l.* 5*s.* which she *oweth* him, and unjustly detaineth, &c. And whereupon the said *H.* by *W. M.* his attorney saith, *That whereas* by certain articles of agreement, made at the said parish of *St. Giles Cripplegate*, on the 23d day of *October* in the year of our Lord 1689, between the said *H. T.* by the name of *H. T.* citizen and blacksmith of *London*, of the one part, and the said *E.* by the name of *E. W.* of the parish of *St. Giles Cripplegate* in the county of *M.* grafier, of the other part, the counterpart of which sealed with the seal of the said *E.* the said *H.* bringeth here into court, the date whereof is on the same day and year, the said *H.* demised, granted,

set

set and to farm let, to the said *E.* all those six acres of meadow, more or less, lying and being in the common field called the *Pesthouse-field*, and in a field near a certain house called the *Halfway-house*, and in a field called the *Conduit-field*, in the several parishes of *St. Giles Cripplegate* aforesaid, and *St. Leonard Shoreditch*, in the said county of *M.* To hold and occupy to the said *E.* his executors, administrators and assigns, from the feast of the nativity of our Blessed Lord and Saviour then next ensuing, for the term of 7 years thence next ensuing, and fully to be complete and ended: *Yielding* and paying therefore yearly the sum of 3l. and 10s. for every acre of the said land, being in the whole 21l. by even and equal portions quarterly at the feast of the annunciation of the blessed virgin *Mary*, the feast of the nativity of *St. John* the baptist, the feast of *St. Michael* the archangel, and the feast of the nativity of our Lord, as by the said articles amongst other things more fully appears; By virtue of which demise the said *E.* entered into the tenements and premisses above demised, with the appurtenances, and was possessed thereof. And being so thereof possessed, the said *E.* afterwards, *to wit*, on the 1st day of *March* in the 6th year of the reign of our sovereign lord *William*, now king, and sovereign lady *Mary*, late queen of *England*, &c. at the said parish of *St. Giles Cripplegate*, made his testament and last will in writing, and constituted and appointed the said *M.* executrix of the said testament, and afterwards died there, so thereof possessed, after whose death, the said *M.* there took upon her the burthen of the execution of the said testament; And afterwards, *to wit*, on the same day and year, entered into the said tenements and premisses above demised and granted, and was possessed thereof by reason of the execution of the said testament; and 36l. 5s. of the said rent for one year and three quarters of a year at the feast of *St. Michael* the archangel in the seventh year of the reign of our sovereign lord the present king, were in arrear to the said *H.* and are still unpaid; whereby an action accrued to the said *H.* to demand and have of the said *M.* the said 36l. 5s. Yet the said *M.* although often requested, &c. hath not yet paid the said 36l. to the said *H.* but hath hitherto refused, and still doth refuse to pay him the same. Wherefore he saith he is injured, and hath damage to the value of 40l. And therefore he bringeth suit, &c.

And the said *M.* by *F. R.* her attorney, cometh and defendeth the force and injury when, &c. And saith that the said *H. T.* ought not to have or maintain his said action thereupon against her; because she saith, that after

Habendum.

Reddendum.

Testator entered.

Makes his will, and defendant executrix, and dies.

Defendant enters.

Actio accrevit.

Plea.
Testator assigned the term.

Profert.

Leſſee entered.

Teſtator gave
notice to Plain-
tiff.

the making the ſaid articles in the ſaid declaration mentioned, the ſaid *E. W.* in his life-time, by his certain writing ſealed with his ſeal, made at the ſaid pariſh of *St. Giles Cripplegate* in the county aforeſaid, on the 21ſt day of *January* in the year of our Lord 1692, which the ſaid *M.* bringeth here into court, for and in conſideration of the ſum of 18l. 5s. 6d. to the ſaid *E.* in hand paid by one *R. H.* bargained, ſold and aſſigned to the ſaid *R. H.* All his eſtate, right, title and property, claim and demand whatſoever, of, in, to or out of the ſaid demised premiſſes, by force or virtue of the ſaid written leaſe or inſtrument, or otherwiſe howſoever; By virtue whereof he the ſaid *R.* afterwards, to wit, on the 1ſt day of *February* in the year of our Lord 1692, entered into the ſaid demised premiſſes, ſo as aforeſaid, bargained, ſold and aſſigned to him with the appurtenances, and was, and ſtill is poſſeſſed thereof. And the ſaid *M.* further ſaith, that he the ſaid *E. W.* in his life-time, afterwards, to wit, on the 10th day of *February* in the year laſt aforeſaid, at the pariſh aforeſaid, in the county aforeſaid, gave notice to the ſaid *H.* of the ſaid aſſignment ſo made to the ſaid *H.* as aforeſaid: And this the ſaid *M.* is ready to verify. Wherefore ſhe prayeth judgment, if the ſaid *H.* ought to have or maintain his ſaid action thereupon againſt her, &c.

The plaintiff did not dare to go on, becauſe the declaration ſhould have been in the Detinet only, and not in the Debet and Detinet. Sed Q.

Declaration in
debt for rent on
a leaſe parol.

Warwickſhire, to wit, *W. B.* late of *Ilimington* in the county of *W.* aforeſaid, yeoman, was ſummoned to answer *R. H.* of a plea, that he render to her 74l. of good and lawful money of *Great Britain*, which he oweth her, and unjuſtly detaineth from, &c. And whereupon the ſaid *R.* by *R. S.* her attorney, ſaith, that whereas ſhe, on the 2d day of *December* in the third year of the reign of our lord the now king, at *Stratford* in the ſaid county, did demise to the ſaid *W.* one meſſuage and fifty acres of land, meadow and paſture with the appurtenances, in *Ilimington* in the county aforeſaid; to have and to hold to him and his aſſigns, from the firſt day of *November* then laſt paſt, to the full end and term of one whole year from thence next enſuing, and fully to be compleat and ended, and ſo from year to year, as long as both parties ſhall pleaſe; yielding and paying therefore yearly, and every year, to the ſaid *R.* the rent of 25l. on the firſt day of *May*; and the firſt day of *November*, by even and

and equal portions; the first payment to be made on the 1st day of *May* then next ensuing; by virtue of which said demise the said *W.* entered upon the said tenements, with the appurtenances, and enjoyed the same: And the sum of 74*l.* rent for three years, on the 1st day of *November* in the year of our Lord 1733, was due in arrear to the said *R.* and still is unpaid; whereby an action accrued to the said *R.* to demand and have of the said *W.* the said 74*l.* rent; yet the said *W.* though often requested, hath not rendered the said 74*l.* to the said *R.* but hath refused, and still doth refuse, to render the same to her, to the damage of the said *R.* of 10*l.* And thereof she bringeth suit, &c.

And the said *A. H.* saith, that he by any thing by the said *J.* above in pleading alledged ought not to be barred from having his said action thereupon against the said *J.* because he saith, that the said *T. F.* in his life-time, *to wit*, at the time of making the said writing obligatory, and also on the first day of *April* in the 7th. year of the reign of *William III.* late king of *England*, &c. and before, was warden of the prison of the said late king, of the *Fleet*, to wit, at *London* aforesaid, in the parish of *St. Mary le Bow* in the ward of *Cheap*. And the said *J. T.* for the whole time aforesaid, *to wit*, on and before the said 1st day of *April*, and also at the time of making the said writing obligatory, was a servant under the said *T. F.* having and exercising the care and custody of the said prison and the prisoners thereto committed, *to wit*, at the parish and ward aforesaid; and that the said *T.* was so warden of the said prison, and the said *J.* as before said, had and exercised the care and custody of the said prison and the prisoners thereunto committed; and lately before the making the said writing obligatory, *to wit*, on the same 1st day of *April* before mentioned, at the parish and ward aforesaid, one *F. H.* gent. was a prisoner in the said prison of the *Fleet* in execution, at the suit of one *Sir A. H.* knt. for a certain debt of 1000*l.* 46*s.* for damages, and then and there without the licence, and against the proper will of the said *T. F.* and with the licence and permission of the said *J. T.* escaped out of the said prison; the said *Sir A.* being then no ways satisfied for the debt and damages aforesaid: whereof the said *J.* at and before the time of making the said writing, had notice, *to wit*, at *London* aforesaid in the parish and ward aforesaid. And the said *T.* being so as aforesaid warden of the said prison, the said *Sir A. H.* knt. before the making the said writing obligatory, *to wit*, on the 12th day of *April* in the term of *Easter* in the

Replication,
that the defend-
ant being a ser-
vant of the
warden of the
Fleet, permitted
a prisoner to
escape.

Bill filed against
the warden for
the escape, set-
ting forth.

The judgment
obtained against
the prisoner in
B. R.

His being com-
mitted in exe-
cution there;

removed by
Habeas Corpus;

7th year of the reign of the said king, came into the court of the said late king, before Sir G. T. knt. and his companions, justices of the said king of the bench at *Westminster*, by H. C. then his attorney, and then exhibited to the said justices his certain bill against the said T. F. warden of the prison of the said late king, of the *Fleet*, then present in the same court in his proper person, of a plea of debt; by which said bill the said Sir A. then complained that the said T. unjustly detained, and did not render to the said Sir A. 1000l. 46s. which he owed him, for that, *to wit*, that *whereas* the said Sir A. heretofore, *to wit*, in the term of *Easter* in the 5th year of the reign of the said late king and the lady *Mary* the late queen, in the court of the said late king and queen, before the said late king and queen, the said court being then at *Westminster* in the county of *M.* by bill without the writ of the said late king and queen, and by the judgment of the same court, had recovered against the said F. H. gent. as well a certain debt of 1000l. as 46s. which in the same court were adjudged to the said Sir A. for his damages which he had sustained as well by occasion of the detaining that debt, as for his costs and charges by him about his suit in that behalf expended, whereof the said F. was convicted. And the said F. H. afterwards, *to wit*, on *Monday* next after the morrow of the ascension of our Lord in the 6th year of the reign of the said late king and queen, then being present in his proper person in the said court of the said late king and queen before the said late king and queen at *Westminster* in the county of *M.* aforesaid, at the prayer of the said Sir A. was committed by the said court of the said late king and queen, before the said late king and queen there, to the custody of the marshal of the *Marshalsea* of the said late king and queen before the said late king and queen, in execution for the debt and damages aforesaid, at the suit of the said Sir A. there to remain until, &c. as by the record and proceedings as well of the said judgment as of the said commitment in execution, remaining in the said court of the said late king, before the said late king at *Westminster* aforesaid, more fully appeared. By virtue of which said commitment the said marshal of the said *Marshalsea* then and there received the said F. into his custody, and had and detained him in execution for the said debt and damages. And the said F. being so in the custody of the marshal of the said *Marshalsea*, in execution for the said debt and damages in form aforesaid, afterwards, *to wit*, on the 24th day of *May* in the 6th year aforesaid, the said F. came in his proper

proper person, being brought under the custody of the said marshal of the *Marshalsea* aforesaid, by virtue of the writ of the said late king and queen of *Habeas Corpus* of the said *Francis*, directed to the said Marshal, issuing out of the court of the said late king and queen of the bench at *Westminster* aforesaid, before Sir *J. P. knt.* then one of the justices of the said late king and queen of the bench, at his chambers situated in *Serjeants-inn* in *Chancery-lane, London*; and the said marshal, *to wit, W. B. esq;* then and there returned to the said justice (amongst other things) that the said *F. H.* was charged in execution at the suit of the said Sir *A.* for the said 1000*l.* of debt, and 46*s.* for damages so as aforesaid recovered, the body of which said *F.* he then and there had ready, according to the tenor of the said writ: *Whereupon*, the said *F. H.* then and there was committed by the said justice to the prison of the said king and queen of the *Fleet* in execution for the said debt and damages, (amongst other things) there to remain until, &c. which said commitment the said justice afterwards, *to wit*, on the 8th day of *June* in the term of the holy *Trinity* in the 6th year aforesaid, by his own proper hands delivered unto the said court of the bench aforesaid, to be inrolled of record, and the same commitment was inrolled of record in the same court, as by the record of the said writ and the return thereof, and the commitment in execution last mentioned, remaining in the same court of the bench aforesaid, *to wit*, at *Westminster* aforesaid, then more fully and plainly appeared; by virtue of which said commitment the said *T. F.* being warden of the said prison of the *Fleet*, on the said 24th day of *May* in the 6th year aforesaid, then and there, *to wit*, before the said justice at his chambers aforesaid situate in *Serjeants-inn* aforesaid, took the said *F. H.* into his custody, and immediately led and put the said *F. H.* unto and in the said prison of the *Fleet*, then being at *London, to wit*, in the parish of *St. Bridget*, otherwise *St. Brides*, in the ward of *Farrington without*, and then and there had and detained the said *F.* in the said prison in execution for the debt and damages aforesaid: And the said *F.* being so, as aforesaid, in the custody of the said *T.* in execution for the said debt and damages in form aforesaid, the said *T.* afterwards, *to wit*, on the 1st day of *April* in the 7th year of the reign of our said late lord king *William* the third, then being warden of the said prison of the said lord the king as aforesaid, had permitted the said *F.* to go at large freely and voluntarily where he would, and to escape out of the said prison and out of his custody, *to wit*, at *London* aforesaid,

committed to
the custody of
the warden,

and permitted
to escape.

Judgment a-
gainst the war-
den.

Removed by
writ of error.

in the parish and ward aforesaid, the said Sir *A.* being then no ways satisfied for the said debt and damages or any parcel thereof; *whereby* an action had accrued to the said Sir *A.* to demand and have of the said *T.* the said 1002l. 6s. Yet the said *T.* although he had been often requested, had not then rendered the said 1002l. 6s. to the said Sir *A.* but had then intirely refused and then refused to render the same to him; wherefore the said Sir *A.* then said he had been injured and had damage to the value of 500l. and thereupon he then prayed remedy, &c. with this that he the said Sir *A.* would then verify that the said judgment then remained in its full force and strength, no ways revoked, reversed, annulled, vacated or satisfied, &c. and he then found pledges for prosecuting, *to wit*, *John Doe* and *Richard Roe*: Upon which said bill first mentioned in the said court of the said late king before the said justices of the said late king of the bench at *Westminster* such proceedings were then afterwards, *to wit*, in that same term of *Easter* in the said 7th year of the reign of the said late king, that the said Sir *A. H.* by the consideration of the same court, recovered against the said *T. F.* the said debt of 1002l. 6s. and his damages by occasion of the detaining that debt to 80s. adjudged by the said court of the said late king to the said Sir *A.* and that the said *T.* should be in mercy, &c. And the said Sir *A.* further saith, that after the said judgment in form aforesaid given, and after the making the said writing obligatory, *to wit*, on the 24th day of *May* in the said 7th year of the reign of the said late king, the said *T. F.* by the advice and at the request of the said *J. T.* for the reversing the said judgment, sued forth out of the chancery of the said late king, the same court being then here at *Westminster* in the county of *Middlesex*, a certain writ of the said late king for correcting errors in the said record and proceedings, and in giving the said judgment, directed to Sir *G. T.* knt. then chief justice of the said late king of the bench, by which said writ the said late king commanded his said chief justice, that if judgment was given thereupon, that then he should send to the said late king distinctly and plainly under his seal the record and process of the said plaint, with all things touching the same and the said writ, so that the said late king might have them from the day of the holy *Trinity* in three weeks then next ensuing, where-soever he should then be in *England*, that inspecting the record and process aforesaid, he might cause further to be done thereupon for amending the said errors, as of right and according to the law and custom of his kingdom

dom of *England* should be meet to be done; by virtue of which said writ for correcting errors, afterwards, at the said day of the return of the said writ, the said record and process of the said plaint, with all things touching the same, were in due manner sent and removed into the court of the said late king before the said late king, the said court then being at *Westminster* in the county of *Middlesex* aforesaid: Upon which such process was upon the said writ for correcting errors in the said court of the said late king before the said late king, that afterwards, *to wit*, in the term of *Easter* in the 8th year of the reign of the late king, it was considered by the said court of the said late king before the said late king, that the said judgment should stand in its full strength and effect, that the said judgment should be in all things affirmed, as by the record and process of the said judgment remaining in the court of our said lady the present queen before the queen herself at *Westminster* more fully appeareth; which said judgment still remaineth in its full force and effect, no ways reversed, annulled or satisfied. And the said Sir *A.* further saith, that the said *T.* in his life-time, *to wit*, within the space of two years next after the date of the said writing obligatory, and soon after the making the same, *to wit*, on the 21st day of *May* in the year of our Lord 1695, aforesaid, at *London* aforesaid, *to wit*, in the parish of *St. Mary le Bow* in the ward of *Cheap* aforesaid, gave notice to the said *J. T.* of the said action so as aforesaid prosecuted by the said Sir *A. H.* against the said *T.* and requested the said *J. T.* to indemnify the said *T.* therefrom; Yet the said *J. T.* within the space of two years next ensuing the date of the said writing obligatory, or at any time afterwards in the life-time of the said *T.* did not indemnify or save harmless the said *T. F.* from the said action so as aforesaid prosecuted by the said Sir *A. H.* knt. against the said *T.* And this he is ready to verify: Wherefore he prayeth judgment and his said debt, together with his damages by occasion of the detaining that debt, to be adjudged to him, &c.

Affirmed in
B. R.

Notice thereof
to the debt.

who did not
save the warden
harmless.

Anthony Rock.

Wm. Kempe.

Be it remembered, that on the 23d day of *January* in this Memorandum
same term, *C. P.* by *J. B.* his attorney, came here into of a bill.
court and exhibited his certain bill against *T. F.* esq;
warden of the prison of our lord the present king of the
Fleet, present here in court in his proper person, of a
plea of debt, the tenor of which said bill follows in these

Bill in debt against the warden of the Fleet for the escape of a prisoner in execution.

Judgment in debt against the prisoner in B. R.

The prisoner committed in execution;

removed by Habeas Corpus;

words: To the justices of our lord the king of the bench, *Middlesex*, to wit, C. P. by J. B. his attorney complaineth of T. F. esq; warden of the prison of our lord the king of the *Fleet*, present here in court in his proper person, for that, that he has not rendered to the said C. 151l. 3s. of lawful money which he oweth him, and unjustly detaineth, for that, to wit, that whereas the said C. heretofore, to wit, in the term of *Easter* in the 4th year of the reign of our lord the now king and lady *Mary* late queen of *England*, in the court of our said lord the king and lady the late queen, before the said king and late queen, the said court then being at *Westminster* in the county of *Middlesex*, by the judgment of the said court recovered against M. G. otherwise called M. G. of *London*, gent. 150l. of debt, and also 23s. for his damages which he sustained, as well by occasion of the detaining that debt, as for his cost and charges by him about his suit in that behalf expended, whereof the said M. was convicted, as by the record thereof now remaining in the court of our said lord the present king before the king himself at *Westminster* aforesaid more fully appears; which said debt and damages in the whole amount to the said 151l. 3s. And afterwards, to wit, on *Monday* next after the octave of the purification of the blessed *Mary* in the term of *Hilary* in the 4th and 5th years of the reign of our said lord the king and lady the late queen, in the said court of our said lord the king and lady the late queen before the said king and late queen at *Westminster* aforesaid, the said C. came in his proper person, and the said M. then present in the same court, and being then in the said court, at the prayer of the said C. was in due manner committed by the court to W. B. esq; then marshal of the *Marshalsea* of our said lord the king and lady the late queen, before our said lord the king and lady the late queen at *Westminster*, in execution, at the suit of the said C. for the debt and damages aforesaid, there to remain until, &c. as by the record and proceedings thereupon remaining in the said court of our said lord the king before the king himself at *Westminster* more fully appeareth; by virtue of which said commitment the said W. B. then and still marshal of the *Marshalsea* aforesaid, took the said M. into his custody in execution for the said debt and damages, and had detained and kept the said M. in execution for the debt and damages aforesaid: And the said M. being as aforesaid in the custody of the marshal of the *Marshalsea* aforesaid, in execution for the said debt and damages, afterwards, to wit, on the 7th day of *July* in the 5th year of the reign of our said lord the king and lady the late queen,

queen, the said *M.* being so as aforesaid in execution for the said debt and damages, by virtue of the writ of our said lord the king and lady the late queen of *Habeas corpus cum causa*, in due manner issuing out of the court of our said lord the king and lady the late queen of the bench here, and directed to the said marshal of the *Marshalsea* of our said lord the king and lady the late queen, before the said lord the king and lady the late queen was brought and had with the said cause aforesaid, by the marshal of the *Marshalsea*, aforesaid, charged in execution with the cause aforesaid, before *J. B.* then being one of the justices of our lord the king and lady the late queen of the bench here, at the parish of *St. Clement Danes*: And thereupon the said *M.* then and there, *to wit*, committed to the custody of the defendant, on the said 7th day of *July* in the 5th year aforesaid, at the said parish of *St. Clement Danes* aforesaid, was in due manner committed by the said *J. P.* then one of the justices of our said lord the king and lady the late queen of the bench here as aforesaid, to the custody of the said *T. F.* then and yet warden of the prison of the *Fleet* aforesaid, charged in execution for the debt and damages aforesaid, as by the record and proceedings thereupon remaining in the said court of the bench here more fully appeareth; by virtue of which said commitment the said *T. F.* then being warden of the said prison of the *Fleet*, then and there had and detained the said *M.* in his custody, in execution for the debt and damage aforesaid, The said *T. F.* then and still being warden of the said prison of the *Fleet*, afterwards, *to wit*, on the 23d day of *November* in the 6th year of the reign of our said lord the king and lady the late queen, at the said parish of *St. Clement Danes*, well knowing the premisses, no ways regarding the duty of his office, but contriving and fraudulently intending to cause the said debt and damages to be wholly lost, against the will and without the licence and notice of the said *C.* the said *C.* being no ways satisfied for the said debt and damages, or any parcel thereof, then and there permitted the said *M.* to go at large where he would, and to escape out of the custody of the said *T. F.* then and yet being warden of the said prison of the *Fleet*, and out of the said execution; whereby an action accrued to the said *C.* to demand and have of the said *T. F.* the said 15*l.* 3*s.* Yet the said *T. F.* hath not yet rendered the said 15*l.* 3*s.* to the said *C.* but hath intirely refused to render the same to him. Wherefore he saith he is injured, and has damage to the value of 20*l.* And thereupon he prayeth remedy, &c. Pledges for prosecuting *J. D.* and *R. R.*

who permitted him to escape.

Actio accrevit.

And

Demurrer to the bill. Salk. 753. And the said *T. F.* in his proper person cometh and defendeth the force and injury when, &c. And saith, that the said declaration, and the matter therein contained, are not sufficient in law for the said *T.* to have and maintain his said declaration against the said *T.* And that he the said *T.* hath no need, and is not bound by the law of the land in any manner to answer to the said declaration made in manner and form aforesaid; and this he is ready to verify: Wherefore for default of a sufficient declaration, the said *T.* prayeth judgment, and that the said *C.* may be barred from having his action thereupon against the said *T.*

Joinder.

Continuance by Cur' advifar'.

Judgment for the plaintiff.

And the said *C.* for that he hath in his said declaration above declared sufficient matter in law, to have and maintain his said action against the said *T.* which he is ready to verify; which said matter the said *T.* doth not deny, nor any ways answer thereto, but intirely refuseth to admit the verifying the same, as before, prayeth judgment, and his said debt, together with his damages, by occasion of the detaining that debt, to be adjudged to him, &c. And because the justices here would advise themselves of and upon the premisses, before they give their judgment thereupon, day is given unto the said parties here, until *Wednesday* next after 13 days of *Easter*, to hear their judgment thereupon, for that the said justices here are not yet, &c. At which day here came as well the said *C.* by his attorney aforesaid, as the said *T.* in his proper person, and hereupon the premisses being seen and fully understood by the justices here, it seemeth to the said justices here, that the declaration and matter therein contained are sufficient in law for the said *C.* to have and maintain his said action against the said *T.* as the said *C.* hath above alledged. Therefore it is considered, that the said *C.* recover against the said *T.* his said debt, and his damages by occasion of the detaining that debt, to 100s. adjudged by the court here to the said *G.* by his assent. And the said *T.* in mercy, &c.

Suggestion, after final judgment in debt on a bond, that the bond was upon condition for performance of covenants pursuant to the stat. 8 & 9 W. 3. c. Scaccario. The condition of the

And now at this day, *to wit*, on the 15th day of *June* in *Trinity* term in the 14th year of the reign of our said sovereign lord *George* the third, come the said bailiffs and citizens of the said city of *Litchfield* by the said *R. M.* their attorney, and say, that the said writing obligatory in the said bill of the said bailiffs and citizens exhibited against the said *Edward Tart*, was under this condition, That if one *Thomas Tart*, his executors, administrators or assigns, did well and truly observe, perform, fulfil, accomplish, pay, and keep all and singular the covenants, grants,

grants, articles, clauses, provisos, payments, conditions and agreements whatsoever, which on the part and behalf of the said *T. T.* his heirs, executors, administrators or assigns, were or ought to be observed, performed, fulfilled, accomplished, paid and kept, comprised or mentioned in one indenture of lease bearing date with the said writing obligatory, and made or expressed to be made between *Luke Robinson*, gent. and *Edward Holmes*, gent. bailiffs of the said city of *Litchfield*, and their brethren the citizens of the said city, of the one part, and the said *T. T.* of the other part, in all things according to the true intent and meaning of the same; then the said writing obligatory was to be void and of none effect, or else should be and remain in full force, power and virtue. And that the said indenture in the said condition mentioned was made on the said 18th day of *March* in the year of our Lord 1776, between the said *Luke Robinson* and *Edward Holmes* then bailiffs of the said city of *L.* and their brethren the citizens of the said city, of the one part, and the said *T. T.* in the said condition mentioned by the name of *T. T.* of *B.* in the county of *W.* tiremaker, of the other part; which other part of the said indenture sealed with the seal of the said *T. T.* the said bailiffs and citizens of the said city of *L.* bring here into court, the date whereof is the same day and year last mentioned, whereby the said *L. R.* and *E. H.* the said bailiffs and their brethren the citizens of the said city, for and in consideration of the rents, covenants and agreements therein after mentioned, expressed and reserved, and on the part and behalf of the said *T. T.* his executors, administrators and assigns, to be paid, done and performed, did with one assent, consent, and agreement for them and their successors, bailiffs and citizens of the said city, demise, lease, set, and to farm let unto the said *T. T.* his executors, administrators and assigns, all those their water corn-mills set, situate, standing and being in or near *Stowe-street* in the said city of *L.* called *Stowe-mills*, and all houses, buildings, ways, waters, pools, ponds, dams, and floodgates to the said mills, or any of them belonging, with all and every of their appurtenances, and all, and all manner of going and running-geer belonging to and used with the said mills; and also all and all manner of goods and chattels, utensils, implements and tools whatsoever of them the said bailiffs and citizens then standing, remaining or being in, at, or belonging to the said mills, and which the then tenants of were obliged to leave there; and that a little piece

bond for performance of covenants in indenture.

The indenture.

Profect of the indenture.

of

of building then lately used as a walk-mill, but then demolished and plucked down, with the land whereon the said building stood. And also all that the piscary or fishing in the *Nether-pool*, otherwise called *Storwe-pool*, adjoining to the said mill; and all that the said pool called *Nether-pool* or *Storwe-pool*, as the same was then meared, bounded and staked out, with liberty also of landing the nets on the waste lands belonging to the said bailiffs and citizens gained out of the said pool, which were not then in lease to any other persons, and all privileges and advantages to and with the said pool, piscary, and fishing usually enjoyed, and all houses, out-houses, edifices, buildings, ways, waters, watercourses, pools, ponds, dams, streams, floodgates, easements, commons, profits, commodities, advantages, hereditaments and appurtenances whatsoever to the premises aforesaid belonging or in any wise appertaining, or accepted, reputed, deemed, taken or known as part, parcel, or member thereof, with free liberty also to and for the said *T. T.* his executors, administrators and assigns to pull down the said mill, and to apply the materials thereof, utensils and geering thereto belonging, as he or they should think proper; he or they erecting or building in the same place another good and substantial mill with fit and proper wheels and appurtenances as therein after mentioned. Except and always reserved out of that demise unto the said bailiffs and citizens, their successors and assigns, all such waste grounds or lands gained out of the said pool as was not staked and set out as aforesaid: *To have* and to hold the said mills, pools, fishery and premises thereby demised, or so intended to be (except before excepted) with their and every of their appurtenances unto the said *T. T.* his executors, administrators and assigns from the 24th day of *June* next ensuing the date of the said indenture, for and during and unto the full end and term of 31 years from thenceforth next ensuing, fully to be complete and ended; *Yielding* and paying therefore yearly and every year, during the first six years of the said demised term, unto the said bailiffs and citizens, their successors and assigns, the rent or sum of 5*l.* of lawful money of *Great Britain*, upon two of the most usual feast-days or days of payment in the year, by even and equal portions without any deduction or abatement whatsoever (except only for the land-tax, and also yielding and paying yearly and every year unto the said bailiffs and citizens, their successors and assigns, during the last 25 years of the said demised term, the rent or sum of 30*l.* of like
lawful

Habendum.

Reddendum.

Covenants.

lawful money upon the same feast-days and times of payment, without any deduction or abatement whatsoever (except only for the land-tax, which the said bailiffs and citizens were to pay and discharge.) And the said *T. T.* for himself, his executors, administrators and assigns, and every of them, did covenant, promise and grant to and with the said bailiffs and citizens and their successors and assigns by the said indenture, that he the said *T. T.* his executors, administrators or assigns, or some of them, should and would yearly and every year during the said demised term, well and truly pay, or cause to be paid unto the said bailiffs and citizens, their successors and assigns, the said yearly reserved rents of five pounds, and thirty pounds of lawful money of Great Britain, upon the respective days and times, and in manner and form above limited and appointed for payment thereof, without any deduction, defalcation or abatement whatsoever (except only for the land-tax); And also that he the said *T. T.* his executors, administrators or assigns, should and would, within the space of six years from the day of the date of the said indenture, erect and build, or cause to be erected and built, a good set of mills at and upon the same place where the said demised mills then stood, and should and would expend and lay out in building the same the sum of 350*l.* and should and would make such mills good, firm and substantial, with proper wheels, gates, utensils and other appurtenances fit for carrying on some sort of iron manufactory, and should and would during the said term, repair, uphold, maintain and keep not only the said mills so to be erected and built, but also the flood-gates, waftes, bridges and dams belonging to the said mills and pool, with all needful and necessary reparations, as by the said indenture amongst other things more fully appears. And the said bailiffs and citizens of the city of *1st Breach.*

in fact say, that before the feast of the nativity of our Lord in the year of our Lord 1769, the said *T. T.* died, that is to say, at London, in the parish of St. Mary Bow in the ward of Cheap, and that at the said feast of the nativity of our Lord in that year the sum of 135*l.* of the rent of 30*l.* aforesaid, for four years and an half ending at that feast in that year, were in arrear from the executors of the last will and testament of the said *T. T.* the said bailiffs and citizens of the said city of *L. to* at London aforesaid, in the parish and ward aforesaid; and the same still remains due and unpaid, contrary to the form and effect of the said covenant of the said *T. T.* so made in that respect. And the said bailiffs *2d Breach.*

and

and citizens of the said city of *L.* further say, that although the said *T. T.* in the said indenture mentioned, within six years next after the making of the said indenture, did erect and build a set of mills at or upon the same place where the said demised mills at the time of the making the said demise stood; yet the said *T. T.* did not cause the same to be well built, neither did the said *T. T.* expend or lay out in building the same sum of 350*l.* nor any sum of money exceeding the sum of 100*l.* nor were the same set of mills made good, firm and substantial, with wheels, gates, utensils, and other appurtenances fit for carrying on any sort of iron manufactory; nor did the said *T. T.* in his life time, or any other person whatsoever, for the space of six years now last past, repair, uphold, maintain or keep the said new erected mills, or any of them, or any of the floodgates, wailes, bridges, and dams belonging thereto, and pool, or any of them, but on the contrary thereof permitted and suffered the said mills, and the said floodgates, wailes, bridges, and dams to be broken down, ruinous and in great decay for want of needful and necessary reparations, and the same still remain broken down, ruinous and in great decay, that is to say, at *London* aforesaid, in the parish of *St. Mary le Bow* in the ward of *Cheape* aforesaid; and this the said bailiffs and citizens of the city of *L.* are ready to verify; and pray judgment, and their damages by reason of the said breaches of covenants, to be adjudged to them. Therefore it is considered by the barons here, that the said bailiffs and citizens ought to recover their damages on occasion of the premisses, against the said *E. T.* But because it is unknown what damages the said bailiffs and citizens have sustained by reason of the said breaches of covenant. Therefore, according to the form of the statute in such case lately made and provided, the sheriffs of *London* are commanded that they cause to come before Sir *Thomas Parker*, knt. chief baron of the exchequer of our lord the king, on next after

Judgment.

Writ of Inquiry
awarded.

at *Guild hall* in the city of *London*, twelve free and lawful men of their bailiwick, to inquire of the truth of the premisses by the said bailiffs and citizens above suggested; and to assess what damages the said bailiffs and citizens have sustained by reason of the breaches of covenant aforesaid; and that they should have on the day before the said chief baron the writ of the said lord the king, to them directed for that purpose. It is likewise commanded to the said chief baron, that he certify the inquisition before him taken to the barons of the exchequer

exchequer at *Westminster*, from the day of *St. Michael* in three weeks next coming, together with that writ. And the same day is given to the said bailiffs and citizens here, &c.

Easter 13 Geo. 3.

Nottinghamshire, *D. B.* late of
to wit, in the said county of
otherwise called *D. B.* of

Declaration in
debt by baron
and feme, on
a bond to the
feme whilst
sole.

in the county of was summoned to
answer *J. R.* and *M.* his wife, (lately called *M. M.*) of a
plea, that he render to them thirty-two pounds of law-
ful money of *Great Britain*, which he owes and unjustly
detains from them, &c. And whereupon the said *J.*
and *M.* by their attorney complain, That
whereas the said *D.* on the first day of *May* in the year
of our Lord 1736, at *Mansfield* in the said county of
Nottingham, by his certain writing obligatory, sealed
with the seal of him the said *D.* acknowledged himself
to be held and firmly bound unto the said *M.* whilst she
was sole, by the name of *M. M.* of *B.* in the county
aforesaid, victualler and grocer, in the aforesaid thirty-
two pounds of good and lawful money of *Great Britain*,
to be paid to the said *M. M.* her heirs, executors, admin-
istrators or assigns, or any of them, when he should
be afterwards thereto required: *Nevertheless* the said *D.* Breach.
the aforesaid thirty-two pounds, or any part thereof, to
the said *M.* whilst she was sole*, or to them the said *J.*
and *M.* after the marriage between them celebrated,
hath not rendered (altho' often thereto requested) but
hath wholly refused and still doth refuse to render the
same to the said *J.* and *M.* to the damage of them the
said *J.* and *M.* of forty pounds; and thereupon they
bring this suit. And the aforesaid *J.* and *M.* bring here Profert.
into court the aforesaid writing obligatory of the said
D. which testifies the debt aforesaid in form aforesaid,
the date whereof is the day and year aforesaid.

Trin.

* *Trely*, Ch. J. *A.* brought an action of debt in right of his
wife due to her before coverture, and he said that the debt was not
paid to the wife, but he did not say that it was not paid to him *post*
desponsalia; and upon demurrer it was adjudged ill, though it had
been good after a verdict. 1 *R. Raym.* 284. *Vide* 1 *Vent.* 119.

Trin. 13 & 14 Geo. 3.

Debt on a bond
by the execu-
trix of the
obligee against
the brother and
heir of the
obligor.

Breach.

London, *J.* S. late of the town of *Hertford* in the
to wit, *J.* county of *Hertford*, gent. brother and
heir of *H. S.* late of the island of *Jamaica*, esq; deceased,
otherwise lately called *H. S. nunc in London sed de insula*
Jamaica Armiger, was summoned to answer *S. F.* widow,
executrix of the last will and testament of *J. F.* late of
London, merchant, deceased, of a plea, that he render
to her 433*l.* which he unjustly \dagger detains, &c. And where-
upon the said *S.* by *J. S.* her attorney says, that whereas
the said *H.* brother of the said *J.* whose heir he is, in his
life-time, to wit, on the fifth day of *November* in the
year of our Lord one thousand seven hundred and
twenty-five, at *London*, to wit, in the parish of *St. Mary*
le Bow in the ward of *Cheap*, by his writing obligatory,
acknowledged himself to be bound to the said *J.* in his
life-time in the said four thousand three hundred and
thirty pounds, to be paid to the said *J.* when he should
be thereunto required; and to which payment, well
and faithfully to be made, he bound himself and his \dagger
heirs by the said writing: Yet the said *H.* in his life-
time, and the said *J.* brother and heir of the said *H.*
although often required, have not, nor hath either of
them, paid the said four thousand three hundred and
thirty pounds to the said *J.* in his life-time, or to the
said *S.* after the death of the said *J.* but refuseth to pay
the same to the said *J.* in his life-time, and to the said
S. after his death; and the said *J.* still refuses to pay the
same to the said *S.* and unjustly detains in delay of the
faithful execution of the said testament: Wherefore she
says

* A man seised of lands in gavelkind, having issue three sons, by
obligation binds himself and his heirs, and dies; debt lies against all
the three sons. 11 *H.* 7. 12. 11 *E.* 3. tit. *Debt.* 7. *Dyer* 5 *El.*
238. 1 *Inst.* 376. b.

A man seised of lands *ex parte materna* by obligation binds himself
and his heirs, and dies; debt lies against the heir *ex parte materna*,
without naming the heir at common law. 11 *H.* 7. 12. 1 *Inst.*
376. b.

\dagger Debt against an heir in the *detinet* only, held bad after verdict.
Pasch. 16 *Car.* 2. *B. R.* *Goodwyn v. Newton.* *Lev.* 130. Held to
be cured by the *Oxford* act, being after verdict. *Mich.* 19 *Car.* 2.
B. R. *Combers v. Wulion.* *Lev.* 224.

\dagger *Hæres non tenetur in Anglia ad debita antecessoris reddenda, nisi per*
antecessorem ad hoc fuerit obligatus; præterquam debita regis tantum.
Fleta, lib. 2. c. 35. *Briton* 65. b. 11 *H.* 6. 48.

says she is injured, and hath damage to the value of twenty pounds: and thereupon she brings suit, &c. And the said S. brings here into court as well the said writing which testifies the said debt in form afore said, whose date is the same day and year afore said, as the letters testamentary of the said J. whereby it appears to the court here, that the said S. is executrix of the last will and testament of the said J. and thereof has the administration, &c.

Protest of the bond.

And probate.

And the said J. by T. S. his attorney, comes and defends the wrong and injury when, &c. and says, that he ought not to be charged with the debt afore said as brother and heir of the said H. by virtue of the said writing, because protesting that the writing afore said is not the deed of the said H. and for plea saith, that he hath not any lands or tenements by descent as heir to the said H. in fee-simple, nor had on the day of obtaining the original writ of the said S. nor at any time since; and this he is ready to verify: Wherefore he prays judgment, if he ought to be charged with the debt afore said as brother and heir of the said H. by virtue of the writing afore said.

Plea, riens per descent tempore impetrationis brevis originalis.

Stat. 3 & 4 W. & M. c. 14. 5 Mod. 122. Redshaw and Hester.

Jeffrey and Barrow. Pas. 10 Ann. 10 Mod. 18.

Geo. Wilson.

And the said S. saith, that by any thing by the said J. above in pleading alledged, she ought not to be precluded from having her said action against him; because she says, that before the day of obtaining her said original writ, *to wit*, on the third day of April in the thirteenth year of the reign of our said lord the now king, the said J. had sufficient lands and tenements by descent as heir to the said H. in fee-simple, whereout he might have satisfied the said S. the debt and damages afore said, *to wit*, at London afore said in the parish and ward afore said; and this she is ready to verify: Wherefore she prays judgment, and that the said debt, together with the damages by means of the detention of the said debt, may be adjudged unto her, &c.

Replication, qu'il ad assés.

John Glynn.

And the said J. saith, that before the day of obtaining the said original writ of the said S. he had not sufficient lands and tenements by descent, as heir to the said H. in fee-simple, whereout he might have satisfied the said S. the debt and damages afore said, or any part thereof, as the said S. hath in replying above alledged; and of this

Rejoinder.

Issue.

this he puts himself on the country, &c. And the said J. doth so likewise, &c.

Debt on bond
by the executor
of the obligee
against the heirs
and devisees of
the obligor.
Lil. Ent. 529.

Surrey, to wit, J. A. late of the parish of *St. Andrew, Holborn*, in the county of *Middlesex*, merchant, and J. his wife, and A. M. late of the same parish, in the county aforesaid, gent. and E. his wife, and E. B. late of *Guildford*, in the county of *Surrey*, widow, which said J. E. and E. and one A. C. now deceased, whom the said J. E. and E. have survived, were daughters and co-heiresses of C. C. otherwise lately called C. C. of *Crawley* in the county of *Surrey*, gent. and devisees of divers lands and tenements, of which the said C. died seised in his demesne of fee, R. R. late of in the county of *Sussex*, T. B. late of in the county of *Sussex*, yeoman, and J. M. late of *Cranley* in the county of *Sussex*, yeoman, surviving devisees of a manor, and of divers lands and tenements whereof the said C. died seised, by the said C. by his last will devised to the said R. B. T. B. and J. M. and to one R. H. late of *Hascombe* in the county of *Sussex*, and now deceased, and whom the said R. T. and J. survived, were summoned to answer H. T. executor of the testament of J. T. of a plea, that they render to him sixty pounds, which they unjustly detain from him, &c. And whereupon the said H. by J. C. his attorney, says, that whereas the said C. father of the said J. E. A. and E. whose surviving heirs and devisees they the said J. E. and E. are in the life-time of the said C. to wit, on the twentieth day of *September* in the fourth year of the reign of late majesty *James* the second, late king of *England*, &c. at *Guildford* in the county of *Surrey*, by his writing obligatory, sealed with the seal of the said H. and to the court of our said lord the now king here shewn, the date whereof is on the day and year aforesaid, acknowledged himself to be bound to the said J. H. in his life-time in the said sixty pounds, to be paid to him when he should be thereunto required; and to the said payment well and truly to be made the said C. in his life-time bound himself and his heirs by the said writing: And whereas the said C. was in his life-time seised in his demesne as of fee, of and in the manor and several tenements and premisses, with the appurtenances, in the said county here after particularly mentioned to be devised; And being so seised thereof the said C. after the twenty-fifth day of *March* in the year of our Lord one thousand six hundred and ninety-two, to wit, on the eleventh day of *January* in the year of our Lord one thousand

Obligor seised.

Made his will.

thousand six hundred and ninety-four, at *Guildford* aforesaid made his testament in writing; *And by the same testament gave and bequeathed to the said R. H. now deceased, R. B. T. B. and J. M. and their heirs, the manor, messuage or tenement, farm, lands, meadow, pasture, feeding, woods, rents, tenements, and hereditaments whatsoever, with the appurtenances, called or known by the name of Woodham, situate within the parish of Chertsey in the said county of Surrey; and by his said testament gave and bequeathed to the said R. H. R. B. T. B. and J. M. and their heirs, one messuage and divers lands with the appurtenances, known by the name of Stubbs, parcel of New Park in Cranley in the county of Surrey aforesaid; and also by his said testament gave and bequeathed to the said E. E. A. and J. their heirs and assigns, one messuage, and divers lands and hereditaments called New Park in Cranley aforesaid; And afterwards, to wit, on the first day of March in the year of our Lord one thousand six hundred and ninety-four aforesaid, at Guildford aforesaid, died seised of such his estate of and in the manor, messuage, lands and tenements aforesaid, with the appurtenances, so as aforesaid respectively devised; After whose death, and before the day of suing out the original writ of the said H. to wit, on the same day and year last mentioned, at Guildford aforesaid, the the said J. E. A. and E. R. H. R. B. T. B. and J. M. agreed to their said legacies so as aforesaid respectively devised to them, and were respectively seised of the manor, messuages, lands and tenements aforesaid so devised to them as aforesaid, by virtue of the several devises aforesaid: Yet the said C. in his life-time, or the said J. E. A. and E. in the life-time of the said A. or the said R. H. R. B. T. B. and J. M. in the life-time of the said R. H. or the said J. E. E. R. B. T. B. and J. M. after the several deaths of the said C. A. and R. H. although often required, have not rendered, nor has any one of them rendered the said sixty pounds to the said J. H. in his life-time, or to the said H. after his death, but intirely refuseth to render the same to the said J. H. in his life-time, and to the said H. after his death; and the said J. E. and E. R. B. T. B. and J. M. after the several deaths of the said C. A. and R. H. have hitherto intirely refused to render the same to the said H. after the death of the said J. H. and still do refuse, and unjustly detain the same: Wherefore he says that he is injured, and has damage to the value of twenty pounds: And thereupon he brings suit, &c. And the said H. brings here into court as well the said writing which testifies the said debt*

Devised to defendant.

Obligor dies.

Defendants agree to the legacies;

And are seised, &c.

Breach.

Profert of the bond;

And probate.

debt in form aforesaid, the date whereof is on the said, &c. As also the said letters testamentary of the said *J. H.* by which it sufficiently appears to the court that the said *H.* is the executor of the said testament of the said *J. H.* and thereof has administration, &c.

Declaration in debt on the statute of 2 & 3 Ed. 6 c. 13. for not setting forth tithes of *Sylva cædua*.
Lil. Ent. 148.

Kent, *J. A.* late of in the said
to wit, *J.* county, yeoman, was summoned to answer
F. P. of a plea, that he render to him nine pounds
eighteen shillings and nine-pence of lawful money of
Great Britain, which he owes to him and unjustly de-
tains, &c. And whereupon the said *F.* by
his attorney says, that whereas the said *F.*
now is, and for divers, to wit, three years and more last
past, was vicar of the vicarage of the parish church of
G. in the said county of *Kent*. And whereas the said *J.*
now, and during all the time last mentioned was pos-
sessor and occupier of a large quantity, to wit, five acres
of woodland, with the appurtenances, lying and being
in the parish of *G.* aforesaid, and within the bounds,
limits and tithable places of that parish. And whereas
the tithe of all wood being *sylva cædua*, and under the
age or growth of twenty years, arising or coming on or
from the said five acres of woodland, with the appur-
tenances, cut down for sale thereof within forty years
next before the fourth day of *November* in the second
year of the reign of the late king *Edward* the VI. and
on the same day and year last mentioned, was of right
due and payable to the vicar of the vicarage aforesaid,
or to his farmer for the time being, in its proper kind
and species: And whereas the said *J.* being so possessed
of the said five acres of woodland as aforesaid, and be-
ing the occupier thereof; and the said *F.* being vicar
of the said vicarage; he the said *J.* within the space of
three years now last past, cut down great quantities of
wood there growing upon the said five acres of wood-
land, and being *sylva cædua*, and under the age of twenty
years, for sale thereof, the tithe of which said wood
so growing on the said five acres of wood-land as afore-
said, and cut down for sale thereof, did of right belong,
and was due and payable to the said *F.* as being vicar
of the said vicarage, in its proper kind and species, and
of right ought to have been rendered and paid to him:
Nevertheless the said *J.* being a subject of this kingdom,
and all and singular the premisses well knowing, after
the cutting down of the said wood being *sylva cædua*,
and

and under the age or growth of twenty years, for sale as aforesaid, that is to say, on the first day of *May* in the year of our Lord 1740, took and carried away the said wood from the places where the same was so cut down, and where the same ought to have been tithed, the tenth part thereof not being separated, divided or set out by the said *J.* from the nine parts residue thereof, nor any agreement or composition made by the said *J.* with the said *F.* for the tithe thereof, contrary to the form of the statute in that case made and provided. And the said *F.* avers, that the tenth part of the said wood, from the other nine parts residue thereof so as aforesaid not divided or set out, and by him the said *J.* so as aforesaid taken and carried away, at the time of taking and carrying away thereof was of the value of three pounds six shillings and three pence of lawful money of this kingdom; by reason whereof an action hath accrued to the said *F.* to require and have from the said *J.* the sum of nine pounds eighteen shillings and nine pence, that is to say, treble the value of the tithe of the said wood by the said *J.* not separated, divided or set out from the nine parts residue thereof, and contrary to the form of the said statute taken and carried away: *Nevertheless* the said *J.* although often required, the aforesaid nine pounds eighteen shillings and nine pence to the said *F.* hath not rendered, but the same to him to render hath hitherto refused, and doth yet refuse, to the damage of the said *F.* of ten pounds; and thereof he brings suit, &c.

Demurrer.

AND the said *J. L.* saith, that the conuſance of the said *J. C.* of the taking of the cattle, goods and chattels aforesaid of him the said *J. L.* in the said place in which, &c. as bailiffs of the said *T. D.* and the matter therein contained, are insufficient in law to maintain him the said *J. C.* to acknowledge the taking of the said cattle, goods and chattels in the said place in which, &c. to be just, and that he the said *J. L.* needeth not, neither by the law of the land is he bound to answer to the said conuſance in manner and form aforesaid made and pleaded; and this he is ready to verify: Wherefore for default of a sufficient conuſance in this behalf, he the said *J. L.* prayeth judgment, and his damages, by means of the taking and unjust detention of the said cattle, goods and

Demurrer to a
conuſance in
replevin.

Causēs of demurrer.

chattels, to be adjudged unto him, &c. And for causes of demurrer in law upon the said conuſance, he the ſaid *J. L.* according to the form of the ſtatute in ſuch caſe lately made and provided, ſheweth to the court here the following cauſes, *to wit*, that the ſaid *J. C.* in and by his ſaid conuſance hath not averred or ſhewn, that the ſaid yearly rent of 4*l.* or any part thereof, was due and in arrear at the time in which the ſaid cattle, goods and chattels were ſo taken as aforeſaid; and for that the ſaid *J. C.* in and by his ſaid conuſance hath not averred or ſhewn that *E. J.* in the ſaid conuſance named, is dead; and for that the ſaid conuſance is uncertain and wanteth from, &c. *J. Foſter.*

Demurrer to evidence at Niſi prius.

And the jurors of the jury, whereof mention is within made, being demanded, alſo came, who to ſpeak the truth of he within contained were choſen, tried and ſworn; upon which the ſaid *A.* by one *L. P.* ſerjeant at law, then of the council of the ſaid *A.* in maintenance of the iſſue within joined, before the ſaid juſtices of aſſiſe ſhewed in evidence to the ſaid jurors, and ſaid that, &c.

And the ſaid *S.* by one *R. B.* then of his council ſaith, that the evidence and allegations aforeſaid, above alledged on the behalf of the ſaid *A.* are not ſufficient in law to maintain the ſaid iſſue, to which he hath no need, nor is he bound by the law of the land to answer. Wherefore for default of ſufficient evidence in this behalf, he prayeth that the ſaid jurors may be diſcharged from giving their verdict in the premiſſes; and that the ſaid *A.* may be precluded from having his ſaid action againſt him the ſaid *S.* &c.

Joinder in demurrer.

And the ſaid *A.* for that he hath ſhewn ſufficient matter in maintenance of the ſaid iſſue in evidence to the ſaid jurors, which matter the ſaid *S.* doth not deny, nor in any manner answer thereto, prayeth judgment, and that the ſaid jurors thereof may be diſcharged; and that the ſaid *S.* may be convicted of the premiſſes, &c. Whereupon the ſaid jurors by the court here are diſcharged of the premiſſes. And day is thereupon given to the ſaid parties before the juſtices within written at *Weſtmiſter*, from the morrow of *All Souls* within written, to hear their judgment thereupon, &c.

Jurors diſcharged.

Day in C. B. given.

Demurrer to writ and declaration.

Oyer of the writ of privilege.

And the ſaid *R. D.* by *T. C.* his attorney cometh and defendeth the force and injury when, &c. and craveth oyer of the ſaid writ of our lord the king of privilege; and it is read to him in theſe words, *to wit*, *George III.* &c. Witneſs, &c. Which being read and heard, the ſaid *R.* prayeth judgment of the writ and declaration of him the ſaid *W. O. B.* aforeſaid; becauſe he ſaith, that the

the said writ and declaration thereupon aforesaid in manner and form aforesaid made and declared, and the matter in them contained, are not sufficient in law for the said *W.* his action aforesaid against him the said *R.* to have and maintain, to which said writ and declaration in manner and form aforesaid made and declared, he hath no need, nor by the law of the realm is held or obliged in any manner to answer; and this he is ready to verify: Wherefore for want of a sufficient writ and declaration in this behalf, the said *R.* prayeth judgment, and that the said *W.* from his action aforesaid may be debarred, &c. And for causes of demurrer in law in this behalf, he the said *R.* according to the form of the statutes in such like cases made and provided, sheweth to the court these following, that is to say, for this, that it appeareth to the court that the same writ of our said lord the king of privilege was had and sued out upon the said 3d day of *July* in the 8th year of the reign of our said lord the king; which day of suing out thereof was before the day on which the said *W.* has in his said declaration thereupon alledged and declared, that the trespasses, assaults, batteries, woundings and imprisonments, charged upon him the said *R.* in and by the said declaration, were done and committed; and also for this, that between the said writ and declaration are diverse variances; and also for this, that the said declaration in form aforesaid made and declared, is in itself repugnant, insensible, contradictory, and wanteth form, &c. And hereupon the said *R. D.* demandeth the aforesaid *W. O. B.* to join in demurrer with him the said *R.* And hereupon a day is given by the court of our said lord the king of the bench here to the said *W.* before his majesty's justices at *Westminster*, until ——— next after ——— to join in the said demurrer in law with the said *R.* And the said *W.* at the same day being solemnly required came not, neither is his writ of our said lord the king of privilege aforesaid against the said *R.* further prosecuted, but made default. Therefore it is considered that the said *W.* take nothing by his said writ, but that he and his pledges to prosecute, *to wit*, *J. D.* and *R. R.* be therefore in mercy; and that the said *R.* do go thereof without day, &c. And further it is considered by the court here, that the said *R.* recover against the said *W.* 3l. 16s. 8d. for his expences and costs by him about his defence in this part sustained, to the said *R.* by the court here, according to the form of the statute in such case lately made and provided, adjudged, &c. And that the said *R.* have his execution for the same, &c.

Causes of demurrer.

Writ tested before the cause of action laid in the declaration.

Judgment for the defendant for default of the plaintiff's joining in demurrer.

Demurrer to a
plea of Nil
debet to a de-
claration of debt
on a bail-bond.

And the said *E. H.* saith, that the said plea of him the said *T. S.* in manner and form aforesaid above pleaded, and the matter therein contained, are not sufficient in law to bar the said *E.* from having his said action against him the said *T.* and that he the said *E.* hath no need, nor is he obliged by the law of the land to answer the said plea of him the said *T.* in manner and form aforesaid above pleaded; and this he is ready to verify: Wherefore for want of a sufficient plea in this behalf, the said *E.* prayeth judgment, and that his said debt, together with his damages by reason of the detaining of the debt, may be adjudged to him, &c. *And* for causes of demurring in law in this behalf, the said *E. H.* according to the form of the statute in such cases made and provided, sheweth to the court here these causes following, (that is to say) For this, that the said *T. S.* hath not by his said plea particularly denied nor confessed the said deed in the said declaration alledged; and also for this, that the said *T.* is estopped by the said deed to say that he doth not owe the money in the said deed mentioned; and ought to have shewn by his plea, how he is discharged from the same.

Joinder.

And the said *T. S.* saith, that the said plea by him the said *T.* in manner and form aforesaid pleaded, and the matter therein contained, are good and sufficient in law to bar the said *E.* from having his said action against him the said *T.* which said plea, and the matter therein contained, he the said *T.* is ready to verify; and because the said *E.* to the said plea hath not answered, nor the same hitherto in any manner gainsaid, he the said *T.* doth pray judgment, and that he the said *E.* may be barred from having against him the said *T.* his action aforesaid, &c.

Ejectment.

Declaration in
trespass and e-
jectment on a
double demise.

Yorkshire, *A. B.* late of, &c. was attached to answer
to wit. *C. D.* in a plea, wherefore with force
and arms he entered into 500 acres of land, &c. in the
parish of *S.* in the county aforesaid, which *E. F.* demised
to the said *C.* for a term of years which is not yet ex-
pired, and into 500 other acres, &c. in the parish of *S.*
aforesaid in the county aforesaid, which *G. H.* demised
to the said *C.* for a term of years which is not yet ex-
pired,

pired, and ejected him from his said several farms, and other wrongs to him did, to the great damage of the said C. and against the peace of our lord the now king, &c. and whereupon the said C. by *W. R.* his attorney complaineth, *That whereas* the said *E.* on the ——— day of

First demise.

——— in the ——— year of the reign of the said lord the king at the castle of *Y.* aforesaid, had demised to the said C. the tenements aforesaid first above mentioned, with the appurtenances, to have and to hold the same tenements first above mentioned, with the appurtenances, to the said C. and his assigns, from the ——— day of ——— then last past to the full end and term of ———

years from thence next following, and fully to be complete and ended. *And whereas* also the said *G.* on the same ——— day of ——— in the said ——— year of the reign of the said lord the king, at the castle of *Y.* aforesaid, had demised to the said C. the tenements aforesaid last above mentioned, with the appurtenances, to have and to hold the same tenements last above mentioned, with the appurtenances, to the said C. and his assigns, from the said ——— day of ——— then last

Second demise.

past, to the full end and term of ——— from thence next following, and fully to be complete and ended. *By virtue* of which said several demises, the said C. entered into the several tenements aforesaid, with the appurtenances, and was possessed thereof. *And* the said C. being so possessed thereof, the said *W.* afterwards, that is to say, on the ——— day of ——— in the ——— year of the reign of the said lord the king, with force and arms, that is to say, with swords, staves and knives, entered into the said several tenements above specified, with the appurtenances, respectively, demised to the said C. in manner aforesaid, in and upon the possession of the said C. thereof, and ejected the said C. out of his said several farms, his said several terms therein not being ended, and other enormities, &c. to the great damage, &c. and against the peace, &c. Whereupon the said C. saith, that he is injured and endamaged to the value of 10l. and thereof he bringeth suit, &c.

J. K. L. M. &c.

I am informed, that you are in possession of, or claim title to the premisses in this declaration of ejectment mentioned, or to some part thereof. And I, being sued in this action as a casual ejector, and having no claim or title to the same, do advise you to appear in ——— term next in his majesty's court of common bench at *Westminster*, by some attorney of that court, and then and there, by rule of the same court, to cause yourselves

Notice to the tenants.

to

to be made defendants in my stead; otherwise I shall suffer judgment therein to be entered against me, and you will be turned out of possession. I am

Your loving friend,

A. B.

Easter term in the thirteenth year of, &c.

Declaration in
ejectionment of a
messuage and
the moiety of a
messuage on
the demise of
the wardens and
poor of the hos-
pital of the
Holy Trinity in
Croydon.

N. to wit, *W. C.* late of *London*, gent. was attached to answer *J. M.* gent. of a plea, wherefore with force and arms he entered into two messuages, and the moiety of one messuage, with the appurtenances, in the town of *N.* which the wardens and poor of the hospital of the Holy Trinity in the county of *Surrey* had demised to the said *J.* for a term, which is not yet passed, and ejected him from his said farm, and did other injuries to him, to the great damage of the said *J.* and against the peace of our lady the present queen; and wherefore the said *J.* by *H. C.* his attorney, complains, that whereas the said wardens and poor on the nineteenth day of *March* in the thirteenth year of the reign of our sovereign lady *Anne*, by the grace of God, queen of *Great Britain*, &c. at the town of *N.* had demised to the said *J.* the tenements aforesaid, with the appurtenances, to hold and occupy the said tenements, with the appurtenances, to the said *J.* and his assigns, from the eighteenth day of the same *March* unto the end and term of ten years thence next following, and fully to be complete and ended; by virtue of which demise the said *J.* entered into the said tenement, with the appurtenances, and was possessed thereof; and the said *J.* being so possessed thereof, the said *W.* afterwards, to wit, on the twenty-second day of *March* aforesaid in the thirteenth year aforesaid, with force and arms, &c. entered into the said tenements, with the appurtenances, which the said wardens and poor had demised to the said *J.* in form aforesaid for a term which is not yet passed, and ejected the said *J.* from his said farm, and did other injuries, &c. to the great damage, &c. and against the peace, &c. Wherefore he says that he is injured, and has damage to the value of 40*l.* and therefore brings suit, &c.

Mr.

Mr. I. R.

I AM informed, that you are in possession, or claim title to the premises in this declaration of ejectment mentioned, or to some part thereof; and I being sued in this action as a casual ejector, and having no claim or title to the same, do advise you to appear the first day of next *Trinity* term in her majesty's court of common bench at *Westminster* by some attorney of that court, and then and there by rule of the same court to cause yourself to be made defendant in my stead, otherwise I shall suffer judgment therein to be entered against me, and you will be turned out of possession.

Notice to the
tenant in pos-
session.

I am,

Your loving friend,

5 May —————

W. C.

Error.

Pleas inrolled at Westminster before Sir T. R. knight and his brethren, justices of his majesty's court of common bench of the term of St. Michael in the tenth year of the reign of our sovereign lord George the second, by the grace of God, of Great Britain, France, and Ireland, king, defender of the faith, &c. Roll 1064.

Midd. *J. D.* late of *Sheer-lane* in the county aforesaid, Declaration in gent. was summoned to answer *T. K.* of a debt on a recognizance of bail. plea, that he render to him 50*l.* of lawful money of *Great Britain*, which he owes to and unjustly detains from him, &c. and thereupon the said *T.* by *W. M.* his attorney, says, that whereas the said *J.* heretofore, that is to say, in *Michaelmas* term in the eighth year of the reign of our lord the now king in his own proper person came into his majesty's court here before Sir *R. E.* knight and his companions, then his said majesty's justices of the bench here at *Westminster* in the said county of *Middlesex*; and then in the same court here did acknowledge

Recognizance,

ledge

The condition.

Judgment against the principal.

Damages not paid, nor principal rendered.

ledge himself to owe to the said *T.* the sum of fifty pounds, which said sum of fifty pounds the said *J.* for himself and his heirs willed and granted to be made of his goods and chattels, and to be levied to the use of the said *T.* upon condition, that if judgment in the said court here, in a certain plea of trespass upon the case, on promise, for the said *T.* against one *G. L.* late of *St. Andrew's Holbourn*, goldsmith, should happen to be given, then the said *G.* should satisfy to the said *T.* all the damages which should be adjudged to the said *T.* against the said *G.* in the said court here, in the said plea of trespass upon the case, or render his body on that occasion to the prison of the *Fleet*, as by the record thereof in the said court here at *Westminster* aforesaid remaining may more fully appear: *And whereas* judgment for the said *T.* in the said plea of trespass upon the case against the said *G.* by the name of *G. L.* late of *St. Andrew's Holbourn* in the county aforesaid, goldsmith, afterwards in *Trinity* term in the eighth and ninth years of the reign of our said lord the king, was given in the said court of the bench here before *Sir R. E. knt.* and his companions then his majesty's justices of the bench here, *to wit*, at *Westminster* aforesaid; and the said *T.* then and there by consideration of the said court recovered against the said *G.* forty pounds, which to the said *T.* in the said court here were adjudged for his damages which he had sustained by reason of not performing of certain promises and undertakings made to the said *T.* by the said *G.* at *Westminster* in the county of *Middlesex* aforesaid, of which the said *G.* is convicted, as by the record and proceedings thereof in the said court here at *Westminster* aforesaid remaining doth more fully appear. *And* the said *T.* doth aver, that the said *G.* hath not yet satisfied the said *T.* the said forty pounds for his damages aforesaid by him the said *T.* against the said *G.* so as aforesaid recovered, or any part thereof, nor rendered his body to the said prison of the *Fleet*, on that occasion, according to the form and effect of the condition of the said recognizance; and that he the said *T.* hath not yet obtained any execution of the said judgment, and that the said *T.* hath not yet sued out any execution against the said *J.* upon the said recognizance, and that the said judgment recovered in form aforesaid yet remains in its full force and effect, not in the least reversed or satisfied, and that the said recognizance acknowledged in form aforesaid still remains in its full force and effect, not vacated or satisfied; whereby an action hath accrued to the said *T.* to demand and have of the said *J.* the said fifty pounds, according to the form and effect of

of the said recognizance: Nevertheless the said *J.* (although often requested) hath not yet paid the said fifty pounds, or any part thereof, to the said *T.* but he to pay the same to him hitherto altogether hath, and still doth wholly refuse, to the said *T.* his damage of ten pounds; and therefore he brings suit, &c.

And the aforesaid *J.* by *J. B.* his attorney, comes and defends the force and the wrong, when, &c. and saith, that he doth not owe the aforesaid *T.* the aforesaid fifty pounds, nor any sum of money, in the form in which the said *T.* above against him hath declared; and of this he puts himself upon the country. Plea nil debet.

And the said *T.* says, that the said plea of the said *J.* in manner and form as the same is pleaded, and the matter therein contained, are not sufficient in law to bar the said *T.* from having his said action maintained against the said *J.* and that he the said *T.* has no occasion, neither is he bound by the law of the land to answer to the said plea in manner and form as the same is pleaded; and this he is ready to verify: Wherefore for want of a sufficient plea in this particular the said *T.* prays judgment and his aforesaid debt, together with his damages, on occasion of detaining the aforesaid debt, to be adjudged to him, &c. and for causes of demurrer in law to the said plea, the said *T.* according to the form of the statute in such case made and provided, shews to this court here these causes following, *to wit*, for that the said *J.* by the said plea neither admits nor denies the several records mentioned in the above declaration of the said *T.* and also for that the said *J.* by his said plea hath endeavoured to put matters of record in issue to be tried by the country; and for that the said plea is uncertain, insufficient, and wants form, &c. Demurrer.

J. Agar.

And the said *J.* although solemnly called on to join in demurrer to the said demurrer in law of the said *T.* cometh not, but maketh default: therefore it is considered, that the said *T.* recover against the said *J.* his debt aforesaid, and also ten pounds for his damages which he hath sustained on occasion of the detaining of that debt, adjudged to the said *T.* with his consent by his majesty's court here; and the said *J.* is at the mercy, &c. Judgment for not joining in demurrer.
Signed 28 Oct.
1736.
Mercy.

Afterwards, *to wit*, on *Wednesday* next after the morrow of *All-Souls* in this same term, comes the aforesaid *J. D.* before our lord the king at *Westminster*, by *S. R.* his attorney, and saith, that in the record and proceedings aforesaid, Errors assigned.

No original.

Certiorari to
the custos bre-
vium prayed.

Award of cer-
tiorari.

Custos brevium
non misit breve.

aforesaid, and also in the giving of judgment aforesaid, there is manifest error in this, that is to say, that the declaration aforesaid, and the matter in the same contained, are not sufficient in law for the said *T. K.* to maintain his said action against the said *J. D.* There is also error in this, that by the said record it appears, that the judgment aforesaid in the plea aforesaid, in form aforesaid given, was given for the said *T.* against the said *J.* when by the law of the land of this kingdom of *Great Britain*, that judgment ought to have been given for the said *J.* against the said *T.* There is error also in this, that there is no original writ between the parties aforesaid of the plea aforesaid, in the aforesaid court of common bench, filed or remaining of record in the custody of the keeper of the writs and rolls of the said court of common bench of the said lord the king, to warrant the judgment and declaration aforesaid in the record aforesaid, and therefore in that it is manifestly erroneous: Whereupon the said *J.* prays a writ of our said lord the king of *certiorari*, to be directed to the right honourable *G. H.* earl of *Litchfield*, keeper of the writs and rolls of the said court of the bench of the said lord the king, to certify to the said lord the king more fully the truth of the same; and it is granted to him, &c. The said *J.* also prays that the judgment aforesaid, for the errors aforesaid, and other the errors in the record and proceedings aforesaid being, may be reversed, annulled and held intirely for nothing, and that he may be restored to all things which he hath lost by occasion of the said judgment; and also that the said *T.* may rejoin to these errors.

W. Browne.

Wherefore *G. H.* earl of *Litchfield*, keeper of the writs and rolls of the court of our lord the king of the common bench, is commanded that he search the original writs of our said lord the king, directed to the sheriff of *Middlesex* of the term of *St. Michael* in the tenth year of the reign of our said lord the king, and filed of record in his custody, and what he shall find therein of an original writ, between the parties aforesaid, of the plea aforesaid, together with the return and indorsement thereof, as fully and intirely as the same remains in his custody, he do certify without delay to our said lord the king wheresoever, &c. together with the said writ directed to him in that behalf. But the said keeper of the writs and rolls hath not returned the said writ directed to him as aforesaid, nor hath done any thing therein.

And

And hereupon the said T. K. in his proper person voluntarily comes here into court, and having heard the errors aforesaid, forthwith saith that neither in the record and proceedings aforesaid, nor in giving the judgment aforesaid, is there any error; and prays, that the court of our lord the king now here would proceed to the examination as well of the record and proceedings aforesaid, as of the matters above assigned for error: And that the judgment aforesaid may be affirmed. But because the court of our lord the king now here is not yet advised of giving judgment of and upon the premisses, a day is therein given to the parties aforesaid, before our lord the king, until whereforever, &c. for hearing judgment thereon, for that the court of our said lord the king now here is not yet advised thereof, &c.

Joinder in error.

Continuance by
cur. advitar'
vult.

*Homine * replegiando.*

Michaelmas Term in the 18th year of king
George the third.

Berks, *N. L.* gent. was attached to answer *W. H.* and *S.* to wit. his wife, of a plea, wherefore the said *S.* he took, and taken holdeth, &c. And whereupon the said *W.* and *S.* by *H. M.* their attorney complain that the said *N.* on the 20th day of May in the 1st year of the reign of our lord the present king at Wantage in the county aforesaid, took the said *S.* and her taken still holdeth: Wherefore they say that they are injured, and have damage to the value of 5000*l.* and thereof they bring suit, &c.

Count in Ho-
mine replegi-
ando. See Salk.
5. 705.
Lilly's Ent.
293.

And the said *N.* in his proper person cometh and defendeth the force and injury, when, &c. and saith, that he did not take the said *S.* in the said declaration mentioned, in manner and form as the said *W. H.* and *S.* his wife

Plea, Non cepit.

* This writ is mentioned as a subsisting remedy in some of the modern books, [See 3 Mod. 120. 3 P. Wil. 154. R. Raym. Eq. Cas. abr.] but the general remedy is by the writ of *Hab. Corp.* at Common Law. *Wynne's Observ. on Fitzh. Nat. Brev.*

wife above complain against him; and of this he putteth himself upon the country.

Hil. 8 Geo. 2. rot. 1260. C. B.

Herefordshire, R. S. was attached to answer *W. B. gen.* to wit. of a plea, wherefore he took S. the wife of the said *W.* and keepeth her taken, &c. and whereupon the said *W.* by *J. C.* his attorney complaineth that the said *R.* on the 1st day of *June* in the year of our Lord 1734, at the parish of *B.* in the county aforesaid, took the said *S.* the wife of the said *W.* and keepeth her yet taken; whereby he saith, that he is prejudiced and damnified to the value of 500l. and thereof he bringeth suit, &c.

Plea non cepit; verdict pro quer. 100l. damages.

Judgments.

Judgment in
cause by Nil di-
cit against one
def. the action
being brought
against three
defts. and two
only plead.
3 Mod. 101.
Carth. 19.
Comb. 18, 39.
2 Show. 469.

Unica taxatio.

AND now at this day, to wit, *Saturday* next after the octave of *St. Hilary* in this same term, until which day the said *E. S. T. P.* and *H. M.* had leave to imparl to the said bill, and then to answer, &c. before the lord the king at *Westminster* cometh as well the said *G. R.* by his attorney aforesaid, as the said *E.* and *T.* by *R. G.* their attorney, and the said *H.* at the same day, although solemnly demanded, doth not come, neither doth he say any thing thereupon, in bar or preclusion of the action of the said *G.* by which the said *G.* remaineth thereupon against the said *H.* undefended, &c. For which it is considered that the said *G.* ought to recover against the said *H.* his damages by occasion of the premisses; but because it is not known whether the said *E.* and *J.* may be convicted of the premisses above laid to their charge or not, and if they can be convicted, it is convenient that there should be but one taxation of the said damages; Therefore let the inquisition for damages against the said *H.* stay until the plea between the said *G.* and the said *E.* and *T.* be determined in some lawful manner, &c. And the said *E. S.* and *T. P.* (all and all manner of exceptions as to the said bill being saved to them)

them) defend the wrong and injury. And the said E. saith, &c. (The defendants pleaded severally in abatement the privilege of C. B.)

And the said C. K. by J. C. his attorney cometh and defendeth the force and injury, when, &c. and saith nothing in bar or preclusion of the aforesaid action of the said G. D. whereby the said G. remaineth against the said C. therein undefended; wherefore the said G. ought to recover against the said C. his damages occasioned by not performing the promises and undertakings aforesaid: But because it is not known what damages the said G. has sustained by occasion of the not performing the promises and undertakings aforesaid; Therefore the sheriff is commanded, that by the oath of 12 honest and lawful men of his bailiwick, he diligently inquire what damages the said G. has sustained, as well by occasion of not performing the promises and undertakings aforesaid, as for his costs and charges by him about his suit in this behalf laid out, and the inquisition which the sheriff shall make thereon, he make appear here on Monday next after the octave of St. Martin, under his seal and the seals of those by whose oath he shall take such inquisition; At which day here cometh the said G. in his proper person, and the sheriff, to wit, H. M. esq; and R. H. esq; now return here a certain inquisition taken before him at the court-house Westminster in the county aforesaid, the 24th day of November in the 14th year of the reign of our lord the now king, by the oath of 12 honest and lawful men of his bailiwick; by which it is found, that the said G. hath sustained damages by occasion of the premisses, besides his costs and charges by him about his suit in this behalf laid out, to 31l. 10s. and for those costs and charges to 20s. Therefore it is considered, that the said G. recover against the said C. his damages aforesaid, by the inquisition aforesaid in form aforesaid found to 32l. 10s. and also 10l. 10s. to the said G. at his request, for his costs and charges by the court here of increase adjudged, which said damages amount in the whole to 43l. And the said C. in mercy, &c.

And the said F. saith nothing in bar or preclusion of the said action of the said S. of the said trespass made in the said tenements newly assigned, whereby the said S. remaineth against the said F. therein undefended; wherefore the said S. ought to recover against the said F. his damages by occasion of the said trespass: But because it is not known what damages the said S. hath sustained by occasion of the said trespass, the sheriff is commanded, &c.

Judgment by Nil dicit in case sur assumpf. at the suit of an attorney.

Inquiry awarded.

The return.

Final judgment. Judgment signed 19 Jan. 1740.

Mercy.

Judgment by Nil dicit in trespass after a new assignment. 2 Vent. 49.

And

Judgment in
debt by Nil di-
citur.

And the said *L.* by *R. N.* his attorney cometh and defendeth the force and injury, when, &c. and saith nothing in bar of the said action of the said *R.* whereby the said *R.* remaineth against the said *L.* thereof undefended: *Therefore* it is considered, that the said *R.* recover against the said *L.* his said debt, and his damages by the occasion of the detaining of that debt, to 40s. to the said *R.* by his assent by the court here adjudged; and the said *L.* in mercy, &c.

Judgment in
debt by Nil di-
citur against an
attorney, with
imparlance.

And the said *S.* in his proper person cometh and defendeth the force and injury, &c. and the said *J.* prayeth that the said *S.* may answer, and the said *S.* prayeth leave thereupon of imparlance here until the octave of *St. Hilary*; and he has, &c. the same day is given to the said *J.* here, &c. *At which day* here came as well the said *J.* by his attorney aforesaid, as the said *S.* in his proper person; and the said *S.* further prayeth leave thereupon of imparlance here until fifteen days of *Easter*; and he hath, &c. the same day is given to the said *J.* &c. *At which day* here came as well the said *J.* by his attorney aforesaid, as the said *S.* in his proper person; and the said *S.* further prayeth leave thereupon of imparlance here until the morrow of the holy *Trinity*; and he hath, &c. the same day is given to the said *J.* here, &c. *At which day*, here came as well the said *J.* by his attorney aforesaid, as the said *S.* in his proper person, and as before the said *J.* prayeth that the said *S.* may answer, and the said *S.* as before defendeth the force and injury, &c. and saith nothing in bar or preclusion of the said action of the said *J.* whereby the said *J.* remaineth against the said *S.* therein undefended: *Therefore* it is considered that the said *J.* recover against the said *S.* his said debt and his damages by the occasion of the detaining that debt to 30s. to the said *J.* by his assent, by the court here adjudged. And the said *S.* in mercy, &c.

Judgment in
debt by Nil di-
citur against an
executrix.

And the said *B.* by *W. R.* her attorney cometh and defendeth the force and injury, when, &c. and saith nothing in bar or preclusion of the said action of the said *T.* and *D.* whereby the said *T.* and *D.* remain against the said *B.* therein undefended: *Therefore* it is considered, that the said *T.* and *D.* recover against the said *B.* their said debt, and their damages by the occasion of the detaining that debt to 50s. to the said *T.* and *D.* by their assent by the court here adjudged, to be levied of the goods and chattels which were of the said earl at the time of his death, being in the hands of the said *B.* to be administered, if she had so much thereof in her hands to be administered; and if she hath not, then the said damages to be levied of the proper goods and

and chattels of the said *B.* And the said *B.* in mercy, &c.

And the said *B.* by *W. R.* her attorney cometh and defendeth the force and injury, when, &c. and saith nothing in bar or preclusion of the said action of the said *T.* and *D.* whereby the said *T.* and *D.* remain against the said *B.* therein undefended: And hereupon the said *T.* and *D.* freely here in court remit to the said *B.* the said 100l. and 400l. in the said declaration first demanded, and pray judgment against the said *B.* for the said 100l. and 400l. in the same declaration last demanded, together with their damages, costs and charges by the occasion of the detaining of the same 100l. and 400l. to be adjudged to them, &c. Therefore it is considered, that the said *T.* and *D.* recover against the said *B.* the said 100l. and 400l. in the said declaration last demanded, and their damages by the occasion of the detaining of the same 100l. and 400l. to 7l. to the said *T.* and *D.* by their assent, by the court here adjudged to be levied of the goods and chattels which were of the said earl at the time of his death, being in the hands of the said *D.* to be administered, if she hath so much thereof in her hands to be administered; and if she hath not, then the said damages to be levied of the proper goods and chattels of the said *B.* And the said *B.* in mercy, &c. And that the said *B.* be quit of the said 100l. and 400l. in the said declaration first demanded, &c.

Judgment in debt by Nil dicit against an executrix, with a Remittitur of part of the debt. 3 Mod. 153. Salk. 65. Comb. 87.

And the said *J.* by *R. B.* his attorney cometh and defendeth the force and injury, when, &c. and saith nothing in bar or preclusion of the said action of the said *C.* by which the said *C.* remaineth thereupon undefended against the said *J.* Therefore it is considered, that the said *C.* recover against the said *J.* his said term yet to come of and in the tenements aforesaid, with the appurtenances, and his damages by occasion of the said trespass and ejectment; but because it is unknown what damages the said *C.* hath sustained by occasion of the trespass and ejectment aforesaid; It is commanded to the sheriff, that by the oath of 12 good and lawful men of his county he diligently inquire what damages the said *C.* hath sustained as well by occasion of the trespass and ejectment aforesaid, as for his costs and charges by him expended about his suit in his behalf; and that the inquisition which, &c. he make apparent here from the day of *Easter* in 15 days, under the seal, &c. and the seals, &c. The same day is given to the said *J.* here, &c. And upon this the said *C.* prayeth the writ of our lord the king to be directed to the sheriff aforesaid, to

Judgment in ejectment by Nil dicit.

Award of writ of inquiry.

Award of Habeas fac. possessionem.

cause

cause him to have possession of his said term yet to come of and in the tenements aforesaid, with the appurtenances; and it is granted to him, returnable here at the time aforesaid, &c.

Judgment for
the plt. by Non
sum informatus
in case sur as-
umpsit.

And the said *W.* by *H. G.* his attorney cometh and defendeth the force and injury, when, &c. and the same attorney saith, that he is not informed by the said *W.* of any answer to be given for the said *W.* to the said *E.* in the said plaint, and he saith nothing else thereupon, by which the said *E.* remaineth thereupon undefended against the said *W.* [*the rest is exactly the same as in a judgment by Nil dicit.*]

Judgment in
debt by Non
sum informatus.

And the said *E.* by *T. K.* his attorney cometh and defendeth the force and injury, when, &c. and the said attorney saith, that he is not informed by the said *E.* of any answer to be given for the said *E.* to the said *A.* and *B.* in the said plaint; and he saith nothing else thereupon, whereby the said *A.* and *B.* remain against the said *E.* therein undefended: *Therefore* it is considered, that the said *A.* and *B.* recover against the said *E.* their said debt and their damages by occasion of the detaining that debt, to 63s. to the same *A.* and *B.* by their assent by the court here adjudged. And the said *E.* in mercy, &c.

Judgment in
ejectment by
Non sum in-
form.

And the said *H.* by *R. C.* his attorney cometh and defendeth the force and injury, when, &c. and the same attorney saith, that he is not informed by the said *H.* of any answer to be given for the said *H.* to the said *G.* in the aforesaid plaint, and he saith nothing else thereupon, by which the said *C.* remaineth thereupon undefended against the said *H.* *Therefore* it is considered, that the said *C.* recover against the said *H.* his said term yet to come of and in the manor and tenements aforesaid, with the appurtenances; Also the said *C.* ought to recover against the said *H.* his damages by occasion of the trespass and ejectment aforesaid; but because [*the rest exactly the same as in judgment by Nil dicit.*]

Judgment in
debt against an
executor by
Relicta verifi-
cat. after Plane
administravit
pleaded.

At which day come here as well the said *C.* as the said *A.* by their attornies aforesaid, and hereupon the said *A.* departing from his averment aforesaid by him above pretended, saith, that he cannot gainsay the action aforesaid of the said *C.* nor that he on the said day of obtaining the original writ of the said *C.* had divers goods and chattels which were the said *T.*'s at the time of his death in his hands to be administered, to the value of the said debt, whereout he could have satisfied the said *C.* for that debt, as the said *A.* hath above alledged: *Therefore* it is considered, that the said *C.* recover against the said *A.* his debt aforesaid, to be levied

of the goods and chattels which were the said *T.*'s at the time of his death, in the hands of the said *A.* to be administered, and 80s. for his damages by occasion of detaining that debt, adjudged by the court here to the said *C.* with his assent, to be levied also of the said goods and chattels, if the said *A.* hath so much thereof to be administered; and if he hath not, then the damages aforesaid to be levied of the said *A.*'s proper goods and chattels. And the said *A.* in mercy, &c.

At which day come here as well the said *C.* as the said *A.* by their attornies aforesaid; And hereupon the same *A.* departing from his averment and proof by him above pretended, saith, that he cannot gainsay the action aforesaid of the said *C.* or that the said *J.* in his life-time undertook in manner and form as the said *C.* above complaineth against him; by reason whereof the said *C.* ought to recover against the said *A.* his damages by occasion of the non-performance of the promises and undertakings aforesaid: But because it is unknown, &c.

And the said *L.* in his proper person cometh and defendeth the force and injury, when, &c. and prayeth leave to imparl here until the morrow of the holy *Trinity*, and he hath it, &c. The same day is given to the said *J.* here, &c. And now here at this day, *to wit*, the said morrow, &c. come as well the said *J.* by his attorney aforesaid, as the said *L.* in his proper person; and hereupon the said *J.* prayeth that the said *L.* may answer. And the said *L.* as before defendeth the force and injury, when, &c. and saith, that he ought not to be charged with the debt aforesaid, by virtue of the writing aforesaid, because he saith, that the writing is not his deed; and of this he putteth himself upon the country; and the said *J.* likewise doth the same. *Therefore*, &c. *At which day* come here as well the said *J.* by his said attorney, as the said *L.* in his proper person; and hereupon the said *L.* waiving his plea aforesaid by him above pleaded, saith, that he cannot deny the action of the said *J.* nor but that the said writing is his deed, nor but that he oweth to the aforesaid *J.* the said 200l. in manner and form as the said *J.* hath above declared against him: *Therefore* it is considered, &c.

And hereupon the said *B.* although solemnly demanded, cometh not, nor hath he entered his issue aforesaid, neither doth he further prosecute his writ aforesaid; *Therefore* it is considered, that the said *B.* and his pledges for prosecuting thereof be in mercy, &c. let the names of the pledges be inquired, &c. and that the said *J.* *S.* go thereof without day, &c. and that he have a return of

Judgment in case against an executor by *Relicta verific.* after Plene administravit pleaded. Signed for not paying for the issue book.

Impar lance.

Plea, Non est factum.

Judgment by *Relicta verifications.*

Judgment of Non Pros' in replevin, for not entering the issue.

the goods and chattels aforesaid, and in what manner, &c. let the sheriff make known hereon. — And hereupon the said J. S. prayeth that the justices here will at their discretion here in court assess his damages sustained as well by reason of the premisses, as for his costs and charges by him expended about his suit in this behalf: *Whereupon* the said justices here, as well at the prayer of the said J. S. as by the consent of the said B. do assess the damages of him the said J. S. sustained as well by reason of the premisses, as for his said costs and charges, to —: *Therefore* it is considered, that the said J. S. recover against the said B. his damages aforesaid assessed by the justices here in form aforesaid. And the said B. in mercy, &c.

Judgment for
the plt. on a de-
murrer to a
plea in case
for assump.

And because the justices here will advise themselves of and upon the premisses before they give judgment thereupon, day is given to the parties here until from the day of St. Michael in three weeks, to hear their judgment thereupon, for that the same justices are not thereupon, &c. *At* which day cometh here as well the said S. as the said N. by their attornies aforesaid, and upon this the said premisses being seen and fully understood by the justices here, it seemeth to the justices here, that the said plea of the said N. above pleaded in bar, and the matter contained in the same, are not sufficient in law to preclude the said S. from having his action against the said N. as the said S. has above alledged; for which the said S. ought to recover his damages by occasion of the premisses against the said N. But because it is not known what damages, &c.

Award of in-
quiry in case
for assumpsit.
1 D. 70. p. 7.
3 Mod. 190.

But because it is unknown what damages the said E. has sustained by occasion of the premisses, *It is commanded* to the sheriff, that by the oath of good and lawful men of the county aforesaid, he diligently inquire what damages the said E. hath sustained, as well by occasion of the premisses aforesaid, as for her costs and charges expended by her about her suit in this behalf, and let the sheriff make apparent the inquisition which he shall make thereof to the justices of the lord the king at *Westminster* from the day of *Easter* in 15 days, under his seal and the seals, &c. *At which day* here cometh the said E. by her attorney aforesaid, and the sheriff did nothing therein, neither did he send the writ: *Therefore*, as at first, let there be another writ to him thereupon in form aforesaid, returnable here from the day of the Holy *Trinity* in three weeks, &c. *At which day* here cometh the said E. by her attorney aforesaid, and the sheriff, namely Sir B. T. knt. and Sir T. K. knt. now return here a cer-
tain

Vic. non misit
breve.
Alias awarded.

tain inquisition taken before him at the *Sugar-loaf* in *Hatton-garden* in the county aforesaid, on the 18th day of *June* last past, by the oath of 12, &c. by which it is found, that the said *E.* hath sustained damages by occasion of the premisses, over and above her costs and charges laid out by her about her suit in this behalf, to 200l. and for those costs and charges to 20s. *Therefore*, &c.

And upon this the said *W. H.* and *A.* pray execution against the said *R. W. E.* and *L.* of the said several sums of money severally acknowledged by them in form aforesaid, according to the form of the judgment of adjudication of execution aforesaid, to be adjudged to them: *Therefore* it is considered, that the said *W. H.* and *A.* have execution against the said *R. W. E.* and *L.* according to the form of the said judgment of adjudication of execution aforesaid, by default, &c.

And upon this the said *A.* prayeth execution against the said *R.* and *W.* of the said several sums of 44l. severally acknowledged by them in form aforesaid, and also against the said *L.* of the said 88l. acknowledged by him in form aforesaid, according to the form of the said recognizance: *Therefore* it is considered, that the said *A.* have execution against both of them the said *R.* and *W.* of the said several sums of 44l. severally acknowledged by them in form aforesaid, and against the said *L.* of the said 88l. acknowledged by him in form aforesaid by default, &c.

Therefore it is considered, that the said *M.* have execution against the said *R.* of the debt and damages aforesaid by default, &c.

Therefore it is considered, that the said *J.* recover against the said *T.* her said debt and her damages aforesaid, assessed by the said jury in form aforesaid to 21s. And also 15l. 6s. to the said *J.* at her request, for her said costs and charges, by the court here of increase adjudged: Which said damages in the whole amount to 16l. 7s. And the said *T.* in mercy, &c.

And because the justices here are willing to advise themselves of and upon the premisses before they give judgment thereupon, day is given to the said parties here until on the octave of *St. Hilary*, to hear their judgment thereupon, for that the same justices here are not yet, &c. At which day here came as well the said *T.* as the said *H.* by their attornies aforesaid. And because the justices here are willing further to advise themselves of and upon the premisses before they give judgment thereupon, day is further given to the said parties here until

Judgment after two Nihils on a Sci. fac. to revive a former judgment on a Sci. fac. upon a recognizance of bail.

Judgment after two Nihils on a Sci. fac. upon a recognizance of bail.

Judgment after one Nihil on a sci. fac. to revive a judgment in debt.

Judgment in debt after verdict for the plaintiff.

Judgment for the defendant in ejectment, on a special verdict.

from the day of *Easter* in 15 days to hear their judgment thereupon, for that the same justices here are not yet, &c. *At which day* here came as well the said *T.* as the said *H.* by their attornies, &c. aforesaid, [*continuances in like manner to the octave of St. Hil.*] *At which day* here came as well the said *T.* as the said *H.* by their attornies aforesaid; whereupon the premisses being seen and fully understood by the justices here, it seemeth to the same justices here, that the said *H.* is in nothing guilty of the trespass and ejectment aforesaid, as he the said *H.* above in pleading for himself hath alledged; *Therefore* it is considered, that the said *T.* take nothing by his said writ, but be in mercy for his false clamour thereupon; and that the said *H.* go thereof without day, &c. *Also* it is considered that the said *H.* recover against the said *T.* his damages by occasion of the premisses, to 15l. 4s. by the direction of the justices here to the same *H.* at his request, for his costs and charges by him in that behalf sustained, according to the form of the statute, &c. by the court here adjudged, &c.

Judgment for
the defendant
on a verdict up-
on Non assump-
sit.

Because as well, &c. *At which day* the jury between the parties aforesaid in the plea afterwards was thereupon respited between them here until to this day, *to wit*, from the day of *St. Michael* in three weeks then next following, unless the justices of our sovereign lord and lady the king and queen, assigned to take the assises in the county aforesaid, by form of the statute, &c. should first come on *Monday* the 15th day of *September* next past, at the town of *Huntingdon* in the county aforesaid. And now here at this day the said *J. S.* cometh by his attorney aforesaid, and the said justices of assise, before whom, &c. sent here their record in these words; *Afterwards* [*see Postreas.*] *Therefore* it is considered, that the said *J. M.* take nothing by his said writ, but be in mercy for his false clamour thereupon. And that the said *J. S.* go thereupon without day, &c. It is also considered, that the said *J. S.* recover against the said *J. M.* his damages by occasion of the premisses, to 7l. by the direction of the justices here adjudged by the court here according to the form of the statute, &c. to the said *J. S.* at his request, for his costs and charges by him sustained in this behalf.

Signed 17 No-
vember 2 W. &
M.

Judgment for
the plaintiff on
a verdict upon
Non assumpsit.

Because as well, &c. *At which day* the jury between the parties aforesaid in the plea aforesaid was respited thereupon between them here until to this day, *to wit*, from the day of the *Holy Trinity* in three weeks then next following, unless *Sir E. H. knt.* chief justice of our lord the king of the bench here assigned by form of the statute,

statute, &c. should first come on *Saturday* the 11th day of *June* next past, at *Westminster* within the hall there commonly called *Westminster-hall* in the county aforesaid; and now here at this day the said *G.* comes by his attorney aforesaid. And the said chief justice before whom, &c. sent here his record in these words, *Afterwards* [see *Posteas.*] *Therefore* it is considered, that the said *G.* do recover his damages against the said *R.* to 75l. 5s. assessed by the said jury in form aforesaid; and also 13l. 15s. adjudged by the court here, to the said *G.* at his request, of increase for his said costs and charges; which said damages in the whole amount to 89l. And the said *R.* in mercy, &c.

Signed 29 November 3 Jac.
a.

And because [continuance by Cur' advise vult] At which day here cometh as well the said *C.* as the said *T.* by their attornies aforesaid. And upon this the premisses being seen and fully understood by the justices here, *It is considered*, that the said *C.* recover against the said *T.* his said term yet to come of and in the said tenements, with the appurtenances, and his said damages to 40s. 6d. assessed by the said jury in form aforesaid. And also 7l. 19s. 6d. to the said *C.* at his request, for his said costs and charges by the court here of increase adjudged; which said damages in the whole amount to 10l. and that the said *T.* be taken, &c. And upon this the said *C.* prayeth the writ of the lord the king to be directed to the sheriff of the county aforesaid, to cause him to have his possession of his said term yet to come of and in the said tenements, with the appurtenances. And it is granted to him returnable here from the day of *Easter* in 15 days, &c.

Judgment in ejectment after verdict for the plaintiff.

And because [continuances by cur' advise vult] At which day here cometh as well the said *G.* as the said *E.* by their attornies aforesaid. Upon which, all and singular the premisses aforesaid being seen and fully understood by the justices here, it seemeth to the same justices that the plea of the said *E.* above in rejoining pleaded in manner and form aforesaid, and the matter in the same contained, are not sufficient in law to preclude the said *G.* from having his said action thereupon, as the said *G.* hath within alledged; *It is considered*, that the said *G.* recover against the said *E.* his said several damages to 500l. and the said 40s. assessed by the said jury in form aforesaid, and also 28l. adjudged by the court here to the said *G.* at his request, of increase, for his said costs and charges, which said damages in the whole amount to 530l. And that the said *E.* be taken, &c.

Habere facias possessionem.

Judgment in trespass for the plaintiff, after verdict on Not guilty as to part, and a demurrer as to the residue; whereupon the jury gave 300l. damages as to the issue in fact, and 200l. contingent damages on the issue in law.

Therefore it is considered, that the said *J.* recover against the said *T.* her said damages assessed by the said jury

Judgment in covenant after verdict for the plaintiff.

Judgment for
the defendant
in replevin on
a nonsuit.
Nisi prius.

jury in form aforesaid, to 61l. and also 34l. 12s. 10d. to the said *J.* at her request, for her said costs and charges, by the court here of increase adjudged; which said damages in the whole amount to 95l. 12s. 10d. and the said *T.* in mercy, &c.

[The *Postea*] Therefore it is considered, that the said *W. C.* and his pledges for prosecuting are in mercy, &c. *Quer' nom' pleg'*, &c. and that the said *W. B. J. T.* and *C.* go thereof without day, &c. and that they have a return of the cattle, &c. and in what manner, &c. the sheriff make appear here on the octave of St. Hilary. Also it is considered, that the said *W. B. J. T.* and *C.* recover against the said *W. C.* their said damages assessed by the said jury in form aforesaid to 40s. 2d. and also 10l. 19s. 10d. to the said *W. B. J. T.* and *C.* at their request for their said costs and charges by the court here of increase adjudged, which said damages in the whole amount to 13l. &c.

Postea.

Postea, verdict
for the plaintiff
in case sur as-
sumpsit.

AFTERWARDS (that is to say) on the day and year, and at the place within mentioned, cometh as well the within named *R. L.* by his attorney within named, as the within named *M. U.* in his proper person before Sir *J. W.* knt. the chief justice within named; and the jurors of the jury whereof mention is within made, summoned to be upon that jury, being impannelled and drawn by ballot according to the form of the statute, &c. and being called over, came; who to speak the truth of the matters within contained being tried and sworn upon their oath say, that the said *M. U.* did undertake and promise in manner and form as the said *R. L.* hath within complained against him; and they assess the damages of the said *R. L.* by reason thereof, besides his costs and charges by him laid out about his suit in this behalf, to 3l. 8s. and for his costs and charges to 40s.

Replevin.

Replevin.

Common Pleas.

Hilary 16 George the third.

Linconshire, *R. B.* was summoned to answer to *S. B.* Declaration in
to wit, gent. in a plea, wherefore he took the replevin.
 the cattle of the said *S.* and unjustly detained the same against
 sureties and pledges, &c. And whereupon the said *S.* by
W. P. his attorney complaineth, that the said *R.* on the
 2d day of *August* in the year of our Lord 1775, at *M.* in
 the said county in a certain piece of ground there called
 the *Lord's Meadows*, took the cattle, *to wit,* three heifers
 and nine steers of the said *S.* and unjustly detained the
 same against sureties and pledges until, &c. whereby the
 said *S.* saith that he is prejudiced and damnified to the
 value of 50*l.* and thereof he bringeth suit, &c.

And the said *R.* by *J. C.* his attorney cometh and de-
 fendeth the force and injury when, &c. and well avow-
 eth the taking of the said cattle in the said place in
 which, &c. and justly, &c. because he saith, that *W.*
duke of P. before the said time when, &c. was seised of
 the said piece of ground called the *Lord's Meadows* in
 which, &c. with the appurtenances in his demesne as
 of fee; and being so seised thereof he the said *W.* duke
 of *P.* long before the time when, &c. to wit, on the 1st
 day of *April* in the year of our Lord 1773. at *M.* afore-
 said demised the said piece of ground in which, &c.
 with the appurtenances to the said *R.* To have and to
 hold the same to the said *R.* from the feast of the annun-
 ciation of the blessed virgin *Mary* then last past, for and
 during the term of 21 years from thence next ensuing and
 fully to be complete and ended. By virtue of which said
 demise thereof the said *R.* entered into the said demised
 piece of ground in which, &c. with the appurtenances,
 and at the same time when, &c. was and still is possessed
 thereof by virtue of the said demise; and because the said
 cattle in the said declaration mentioned at the said time
 when, &c. were in the said piece of ground in which, &c.
 eating the corn of the said *R.* there growing, and doing
 damage there; Therefore he the said *R.* well avoweth the
 taking

Avowry as les-
 see for years for
 damage-seasant.

taking of the said cattle in the said piece of ground in which, &c. and justly, &c. as a distress for the said damage; and this he is ready to verify: Wherefore he prayeth judgment and a return of the said cattle, together with his damages, &c. according to the form of the statute in such case lately made and provided, to be adjudged to him, &c.

Bar, right of
common in the
locus in quo,
&c.

And the said S. saith, that by reason of any thing above alledged by the said R. he the said R. ought not to avow the taking of the said cattle in the said place in which, &c. to be just, because he saith, that the said place in which, &c. is and from time whereof the memory of man is not to the contrary, hath been parcel of certain grounds called the *Lord's Meadows* in M. aforesaid; and that he the said S. at the said time when, &c. and long before was and still is seised in his demesne as of fee of 130 acres of land with the appurtenances in M. aforesaid. And the said S. and all those whose estate he hath in his said 130 acres of land with the appurtenances, from time whereof the memory of man is not to the contrary, have had and used, and have been accustomed, and of right ought to have and use common of pasture in the said piece of ground called the *Lord's Meadow*, whereof, &c. (his and their own land there excepted) for 37 of their commonable neat beasts, couchant and levant on the said 130 acres of land of the said S. with the appurtenances every year on and from the 1st day of *August* until and upon the 11th day of *November* then next following, as belonging and appertaining to the said 130 acres of land, with the appurtenances: And therefore he the said S. being so seised of his said 130 acres of land, with the appurtenances as aforesaid, on the said 2d day of *August* in which, &c. put the said cattle in the said declaration mentioned, being his own commonable neat beasts, and couchant and levant on his said 130 acres of land, with the appurtenances, into the said place in which, &c. parcel, &c. to use his said common of pasture there, which said cattle were there on that occasion until the said R. in his own wrong at the said time when, &c. took the said cattle in the said place, in which, &c. parcel, &c. and unjustly detained them against sureties and pledges until, &c. as the said S. hath above complained against him; and this he is ready to verify: Wherefore in as much as the said R. hath above acknowledged the taking of the cattle in the said place in which, &c. parcel, &c. he the said S. prayeth judgment and his damages by reason of the taking and unjustly detaining thereof, to be adjudged to him, &c.

And

And the said R. saith, that by reason of any thing above alledged by the said plea in bar of the said S. to the said avowry of the said R. he ought not to be barred from having his said avowry, because he says, that the said cattle at the said time when, &c. were in the said place in which, &c. by the wrong of the said S. eating the corn of the said R. there growing, and doing damage there, as the said R. hath by his said avowry above alledged; *Without this*, that the said S. and all those whose estates he hath in the said 130 acres of land with the appurtenances, from the time whereof the memory of man is not to the contrary, have had and used, and have been accustomed, and of right ought to have and use common of pasture in the said piece of ground called the *Lord's Meadows*, whereof, &c. (his and their own land there excepted) for 37 of their commonable neat beasts couchant and levant on the said 130 acres of land of the said S. with the appurtenances, every year on and from the 1st day of *August* until and upon the 11th day of *November* then next following. *As* belonging and appertaining to the said 130 acres of land with the appurtenances, in manner and form as the said S. hath by his said plea in bar to the said avowry in that respect above alledged; and this he is ready to verify: *Wherefore*, as before he prayeth judgment and a return of the said cattle together with his damages, &c. according to the form of the statute in such case lately made and provided, to be adjudged to him, &c.

Replication.

Traverse

And the said S. saith, as before, that the said S. and all those whose estate he hath in the said 130 acres of land with the appurtenances, from the time whereof the memory of man is not to the contrary, have had and used, and have been accustomed, and of right ought to have and use common of pasture in the said piece of ground called the *Lord's Meadows*, &c. (his and their own land there excepted) for 37 of their commonable neat beasts, couchant and levant on the said 130 acres of land of the said S. with the appurtenances, every year on and from the 1st day of *August* until and upon the 11th day of *November* then next following, *As* belonging and appertaining to the said 130 acres of land with the appurtenances in manner and form as the said S. hath by his said plea in bar to the said avowry in that respect above alledged; and this he prayeth may be inquired of by the country; and the said R. doth so likewise. *Therefore* the sheriff is commanded that he cause to come here in 8 days of the purification of the blessed virgin *Mary*, twelve,

Rejoinder.

Issue.

Venir.

twelve, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c.

Hil. 36 H. 6. ro. 466.

Declaration in
replevin.
Hob. 16.

Impar lance.

Judgment for
a Return. ha-
bend. because
no mention in
the declaration
in what place
the cattle were
taken.

Avowry pro
return' habend.

Surrey, to wit, Heretofore, as appeareth in the term of *St. Michael* in the 35th year of the reign of our lord the present king in the 241 roll it is so contained: *J. A.* was summoned to answer *J. D.* of a plea wherefore he took the cattle of the said *J. D.* and unjustly detained them against gages and pledges, &c. And whereupon the said *J. D.* in his proper person complaineth, that the said *J. A.* on the last day of *June* in the 34th year of the reign of our said lord the present king at *T. in a certain place called*, &c. took the cattle, to wit, three cows and four bullocks of the said *J. D.* and unjustly detained them against gages and pledges, until, &c. Whereupon he saith he is injured and hath damage to the value of 16l. and thereupon bringeth suit, &c. And the said *J. A.* by *W. T.* his attorney cometh and defendeth the force and injury when, &c. And prayeth leave of imparling thereupon here, until from the day of *St. Hilary* in 15 days, and hath, &c. By the assent of the said *J. D.* The same day is given to him the said *J. D.* and here, &c.

And now here at this same 15th day of *St. Hilary* cometh as well the said *J. D.* in his proper person, as the said *J. A.* by his attorney afore said: Whereupon the said plea being seen, read and understood, &c. by the justices here, *because in the said declaration there was no mention in what place the said cattle were taken*, it seemeth to the said justices, that a due avowry being first made by the said *J. A.* for having a return of the said cattle, then the said *J.* for the insufficiency of the said declaration, ought to have a return of the said cattle, &c. And upon this the said *J. A.* for having a return of the said cattle, well avoweth the taking the said cattle in the town afore said, in a certain place called the *Vicar's Land*; and justly, &c. because he saith, that one *J. C.* vicar of the church of *St. M.* in *T.* long before the time in which the said taking is supposed to be done, was seised of two acres of land with the appurtenances in *T.* afore said, whereof the said place, in which, &c. is parcel, as glebe of the said church, in his demesne as of fee, in right of the said church; and being so seised thereof long before the taking, &c. demised to the said *W. A.* the said two acres of land, to have from the same day by five years thence next following [which *W.* demised

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misf over to the defendant, and so avows for damage-
seasant] and prayeth a return of the said cattle, &c.
Therefore it is granted that the said *J. A.* have a return
of the said cattle, &c. And the said *J. D.* in mercy,
&c.

*In the county court of Middlesex held the 2d day
of August in the 18th year of king George the
third.*

In the county court of Mid. to wit. } *J. F.* was summoned to answer to
} *J. C.* in a plea wherefore he
took the goods and chattels of the said *J. C.* and them
unjustly detained against sureties and pledges, &c.
Whereupon the said *J. C.* by *S. T.* his attorney com-
plaineth, that the said *J. F.* on the third day of *July* in
the 18th year of the reign of our sovereign lord *George* the
3d, now king of *Great Britain*, at the parish of *St. Giles*
in the Fields in the said county of *Middlesex*, at a certain
place there called and known by the name of *Little St.*
Andrew-street in the county aforesaid, in a certain mes-
suage situate in the said street and then in the possession
of the said *J. C.* and within the jurisdiction of this
court, did take the goods and chattels of the said *J. C.*
that is to say, two looking-glasses in gilt frames, two
brass arms and six chairs, and them unjustly detained
against sureties and pledges, &c. Wherefore the said
J. C. saith that he is injured and hath received damage
to the value of * 20l. and thereof he bringeth this suit,
&c.

Decl. in reple-
vin in the coun-
ty court.
Co. Ent. 314.
b.

Pledges for prosecuting { *John Doe,*
and
Richard Roe.

London, to wit, *J. S.* late, &c. was summoned to an-
swer to *B. B.* of a plea why he took the goods and chattels
of the said *B.* and them unjustly detained against sure-
ties and pledges, until, &c. And whereupon the said
B. by *W. S.* his attorney complaineth, that the said *J.*
the 29th day of *August* in the 7th year of the reign of
our lord the king, who now is, &c. at *L.* aforesaid, that
is

Decl. in reple-
vin.

N. B. In replevin by plaint, the sheriff may hold plea in his
county court, although the value be of 20l. or above, by force of the
statute of *Marlebridge*. 2 Inst. 139. 312.

is to say, in the parish of *Christ-Church* in the ward of *Farringdon-Within*, in a certain place there called the kitchen, part of the dwelling-house of the said *B.* in the parish and ward afore said, took the goods and chattels, that is to say, two watches of the said *B.* and them unjustly detained against sureties and pledges until, &c. Whereupon he saith, that he is damnified and hath sustained damages to the value of 40*l.* and thereof he bringeth this suit, &c.

Cognizance as
bailiff.

J. F. seised in
fee.

By indenture.

Profert,

Grants a yearly
rent,
issuing out of
the locus in
quo, &c.
To *W. L.* and
M. his wife,
and the heirs of
the body of *M.*
to be begotten
by *W.*

With power of
distress.

And the said *J. C.* by *S. L.* his attorney cometh and defendeth the force and injury when, &c. and as bailiff of *T. D.* well acknowledgeth the taking of the said goods, chattels and cattle in the said places in which, &c. and justly, &c. because he saith that *J. F.* long before the said time when, &c. was seised of the said places in which, &c. with the appurtenances, in his demesne as of fee, and being so seised thereof, he the said *J. F.* by an indenture made at the parish of *King's Norton* afore said, on the 30th day of *August* in the 15th year of the reign of the late king *Charles I.* between the said *J. F.* of the one part, and *W. L.* and *M.* his wife, by the name of *M. F.* daughter of the said *J. F.* of the other part, one part of which said indenture, sealed with the seal of the said *J. F.* the said *J. C.* bringeth here into court, bearing date the same day and year, for and in consideration of the marriage then had between the said *W.* and *M.* and to and for some maintenance and livelihood to to be provided and assured to and for the said *W.* and *M.* by the said *J. F.* in satisfaction of part of the marriage portion of the said *M.* did for himself and his heirs give and grant to the said *W. L.* and *M.* his wife, one annual or yearly rent of 4*l.* of lawful money of *England*, yearly issuing, payable, and going forth of the said places in which, &c. (among other things) To have, hold, receive, take and enjoy the said annual or yearly rent of 4*l.* of lawful money of *England*, unto the afore said *W. L.* and *M.* his wife, and the heirs of the body of the said *M.* by the said *W. L.* lawfully to be begotten for ever, to be paid at the feasts of *St. Michael* the archangel, and the annunciation of the blessed virgin *St. Mary*, by even portions. And the said *J. F.* did grant for himself and his heirs, by the said indenture, that if it should happen that the said annual rent of 4*l.* or any part thereof, to be in arrear and unpaid by the space of 21 days next after any of the said feasts (being lawfully demanded) then it should be lawful for the said *W. L.* and *M.* and either of them, and the heirs of the body of the said *M.* by the said *W. L.* lawfully begotten, and every of

of them, into the said places in which, &c. (among other lands) and every part and parcel thereof to enter and distrain, and the distress and distresses then and there found to lead, drive, chase, and carry away, and the same to impound, with-hold, detain and keep until the same annual rent of 4l. and every part thereof, with the arrearages, be fully satisfied and paid, as by the said indenture more fully appeareth. By virtue of which said grant thereof they the said *W. L.* and *M.* his wife became seised of the said yearly rent of 4l. in their demesne as of fee-tail, *to wit*, to them and the heirs of the body of the said *M.* by the said *W. L.* And being so seised thereof, he the said *W. L.* afterwards, *to wit*, on the 1st day of *June* in the year of our Lord 1681, at the parish of *Kingstorton* aforesaid died, leaving issue of his body, on the body of the said *M.* his wife begotten, *M. L.* their daughter, and no other issue; and the said *M.* survived him, and became sole seised of the said yearly rent, for and during the term of her natural life, the remainder thereof belonging to the said *M.* and the heirs of her body. And being so seised thereof she, the said *M.* afterwards *to wit*, on the 1st day of *May* in the year of our Lord 1695, at the parish of *Kingstorton* aforesaid died seised of her said estate therein. Upon whose death the said *M.* her only daughter and heir, became seised of the said yearly rent of 4l. in her demesne as of fee-tail, *to wit*, to her and the heirs of her body. And being so seised thereof, she the said *M.* afterwards, *to wit*, on the 15th day of *June* in the year of our Lord 1690, at the same parish took to her husband *E. J.* by reason whereof they the said *E. J.* and *M.* his wife, in the right of the said *M.* became seised of the said yearly rent of 4l. in their demesne as of fee-tail, *to wit*, to them and the heirs of the body of the said *M.* And being so seised thereof, she the said *M.* afterwards, *to wit*, on the first day of *June* in the year of our Lord 1703, at the same parish died, leaving issue of her body by the said *E. M. J.* her daughter and heir, and so seised of her said estate in the said yearly rent of 4l. Upon whose death the said *E. J.* became seised of the said yearly rent of 4l. in his demesne, as of free-hold, for the term of his life, as tenant thereof by the law of *England*; and afterwards, *to wit*, on the 10th day of *October* 1706, at the parish of *Kingstorton* aforesaid the said *E.* died. Upon whose death the said *M. J.* her daughter and sole heir became seised of the said yearly rent of 4l. in her demesne as of fee-tail, *to wit*, to her and the heirs of her body. And being so seised thereof, she the said

W. L. and *M.*
his wife seised
of the rent in
fee-tail.

W. L. and *M.*
leave issue only
M. their daughter.

M. the daughter
seised of the
rent in tail.

Marries *E. J.*

Leaves issue *M.*
her daughter.

E. J. becomes
tenant by the
curtesy and
dies. *M.* the
daughter be-
comes seised,
&c.

Marries *J. D.*

said

who dies.

She marries
W. B.

A fine levied.

Between S. P.
plaintiff and
the said W. B.
and M. de-
forceants.

said *M.* afterwards, *to wit*, on the 20th day of *October* in the year last aforesaid, at the same parish took to her husband *J. D.* And thereupon the said *J. D.* and *M.* his wife, in right of the same *M.* became seised of the said yearly rent of 4l. in their demesne as of fee tail, *to wit*, to them and the heirs of the body of the said *M.* And being so seised thereof, he the said *J. D.* afterwards *to wit*, on the 1st day of *April* in the year of our Lord 1709, at the same parish died, and the said *M.* his wife survived him, and became sole seised of the said yearly rent of 4l. in her demesne as of fee-tail, *to wit*, to her and the heirs of her body. And being so seised thereof, she the said *M.* afterwards, *to wit*, on the 1st day of *September* in the same year, at the same parish took to her husband *W. B.* Whereupon they the said *W. B.* and *M.* his wife became seised in the right of the said *M.* of the said yearly rent of 4l. in their demesne as of fee-tail, *to wit*, to them and the heirs of the body of the said *M.* And being so seised thereof, afterwards, *to wit*, in the term of *St. Hilary* the 8th year of the reign of the late queen *Anne*, a certain fine was levied in the court of the said late queen of the bench here, *to wit*, at *Westminster*, before *T. T. J. B. R. F.* and *R. D.* then justices and other faithful subjects of the said late queen then and there present, between *S. P.* spinster plaintiff, and the said *W. B.* and *M.* his wife deforceants, of the said yearly rent of 4l. by the name of the annual rent of 8os. issuing of and from one messuage, 20 acres of land, 10 acres of meadow, and 20 acres of pasture with the appurtenances in *Kingstnorton* aforesaid. Whereupon a certain plea of covenant was summoned between them in the same court, *to wit*, that the said *W.* and *M.* acknowledged the said rent to belong to her the said *S.* as that which the said *S.* had of the gift of the said *W.* and *M.* and they remised and quit-claimed the same from the said *W.* and *M.* and their heirs, to the said *S.* and her heirs for ever. And moreover the said *W.* for himself and his heirs, did grant that he would warrant to the said *S.* and her heirs, the said rent against the said *W.* and his heirs for ever. And likewise the said *W.* and *M.* acknowledged for themselves and the heirs of the said *M.* that they would warrant to the said *S.* and her heirs the said rent against the said *W.* and *M.* and the heirs of the said *M.* for ever. And for this acknowledgment, remission, quit-claim, warrant, fine, and concord, the same *S.* did give to the said *W.* and *M.* 60l. sterling; as by the record of the said fine remaining in the court of our

Lord

lord the now king of the bench here, *to wit*, at *Westminster* aforesaid, manifestly appeareth. Which said fine, so had and levied as aforesaid, was had and levied to and for the only proper use and behoof of the said S. her heirs and assigns for ever. Whereupon the said S. became seised of the same yearly rent of 4l. in her demesne as of fee; and being so seised thereof she the said S. afterwards, *to wit*, on the 11th day of *February* in the year of our Lord 1730, at the parish of *Kingsnorton* aforesaid made her last will and testament in writing, and thereby gave and devised the said yearly rent of 4l. to H. D. and his heirs for ever. And afterwards, *to wit*, on the same day and year, at the same parish, she, the said S. died so seised of her said estate therein. Upon whose death the said H. became seised of the said yearly rent of 4l. in his demesne as of fee, by virtue of the said devise thereof; and being so seised thereof, he the said H. afterwards, *to wit*, on the first day of *March* in the year of our Lord 1735, at the same parish died seised of the said yearly rent of 4l. in his demesne as of fee. Upon whose death the said yearly rent of 4l. descended to the said T. D. his brother and heir. By virtue of which said descent thereof, he the said T. D. became seised, and still is seised of the said yearly rent of 4l. in his demesne as of fee. And because 10l. of the said yearly rent for two years and a half, ending on the feast of the annunciation of the blessed virgin *Mary* in the year of our Lord 1742, on that feast were due and in arrear to the said T. D. and (although lawfully demanded at the said time when, &c. being after the end of 21 days next after that feast, remained in arrear and unpaid; therefore the said J. C. as bailiff of the said T. D. well acknowledgeth the taking of the said goods, cattle and chattels, in the said places in which, &c. and justly, &c. as a distress for the said arrears of the said yearly rent; and this he is ready to verify: Wherefore he prayeth judgment, and a return of the said goods, cattle and chattels, together with his damages, &c. according to the form of the statute in such case lately made and provided, to be adjudged to him, &c.

And the said J. L. saith, that the said J. C. for any thing by him above alledged in pleading as bailiff of the said T. D. ought not to acknowledge the said taking the said goods, cattle and chattels in the said places in which, &c. to be just, because he saith, that the said fine so had and levied as aforesaid was had and levied to and for the only proper use and behoof of the said M. B. and her heirs;

The fine levied to the use of the said S. P. in fee.

S. P. seised in fee.

Who by will devises it to H. D. in fee.

H. D. seised of the rent in fee.

It descends to T. D. as his heir.

T. D. seised in fee.

For rent arrear makes cognizance as bailiff of the said T. D.

Bar, that the fine was levied to the use of M. B.

Traverse.

heirs; *Without this*, that the said fine so had and levied as aforesaid was had and levied to and for the only proper use and behoof of the said *S. P.* her heirs and assigns, as the said *J. C.* by his said cognizance hath above alledged; and this the said *J. L.* is ready to verify: Whereupon since the said *J. C.* above acknowledgeth the said taking of the said goods, cattle and chattels, the said *J. L.* prayeth judgment, and his damages on occasion of the said taking and unjust detention of the said goods, cattle and chattels, to be adjudged to him, &c.

Replication.

And the said *J. C.* saith, as before, that the said fine so had and levied as aforesaid, was had and levied to and for the only use and behoof of the said *S. P.* her heirs and assigns, as the said *J. C.* by his cognizance has above alledged; and hereupon he putteth himself upon the country; and the said *J. L.* doth so likewise: *Therefore* the sheriff is commanded that he cause to come here in three weeks from the day of the holy *Trinity*, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c.

Issue.

Venire
awarded.

Avowry by a
church-warden,
in the name of a
distress on the
Stat. 43 Eliz.

And the said *J. S.* by *J. B.* his attorney cometh and defendeth the force and injury, when, &c. and as church-warden of the said parish of *Christ-church* in the ward aforesaid, according to the form of the statute, &c. well avoweth the taking of the said goods and chattels in the said place in which, &c. because he saith, that at the said time when, &c. he the said *J. S.* was church-warden of the said parish of *Christ-church* in the ward aforesaid; and that he the said *J. S.* as church-warden as aforesaid at the time, &c. took the said goods and chattels in the said place in which, &c. in the name of a distress, by authority and according to the tenor, purport and effect of a certain statute, made in a parliament of our late sovereign lady *Elizabeth*, queen of *England*, &c. holden at *Westminster* in the county of *Middlesex*, in the 43d year of her reign, and as church-warden, &c. by virtue of the said statute well avoweth the said taking, &c. in the name of a distress, and justly, &c. and this he is ready to verify: Wherefore he prayeth judgment, and that a return of the said goods and chattels, together with his damages, according to the statute, may be adjudged to him, &c.

Replication.

And the said *B.* saith, that the said *J. S.* for the reason before alledged, ought not to well avow the taking the said goods and chattels in the said place in which, &c. because he saith that the said *J. S.* of his own proper injury, and without any such cause by him above mentioned in his avowry, took the said goods and chattels of him

him the said *B.* in the said place in which, &c. and them unjustly detained against sureties and pledges, &c. in the manner and form as he the said *B.* above against him complaineth; and he demands that this may be inquired of by the country: And the said *J. S.* doth the like.

GEORGE the third, by the grace of God, of Great Britain, France and Ireland, king, defender of the faith, &c. To the sheriff of *Middlesex* greeting. If *J. F.* shall give you security that his suit shall be prosecuted, then in your full county cause the plaint to be recorded which is in the same county, without our writ, between *J. C.* and *J. F.* of the goods and chattels of the said *J. C.* taken and unjustly detained, as it is said, wherein the said *J. F.* complaineth that false judgment hath been given against him in the said county, and that you have the said record before our justices at *Westminster* on the octave of *St. Hilary*, under your seal and the seals of four lawful knights of the same county, of such as shall be present at the said record, and summon by good summoners the said *J. C.* that he be then there to hear the said record; and have you there the summons, the names of the said four knights, and this writ. Witnesses Ourselves at *Westminster*, the 17th day of *December* in the 18th year of our reign.

Writ of false judgment.

	s.	d.
Curfitor	2	6
Duty	2	0
Fine	6	8
	11	2

Burgh.

By the Lord Chancellor of *Great Britain*, at the instance of the demandant.

s. d.
Received vi. viii.
S. Hetherington.

Hertfordshire, *SIR W. P.* late of *Bushey* in the county to wit. *S* afore said, knight, was summoned to answer *S. T.* esq; of a plea, wherefore he took the * cattle of the said *S.* and them unjustly detained against gages and pledges, &c. And whereupon the said *S.* by *J. W.* his attorney, complains that the said *Sir W.* on the eighteenth day of *May* in the first year of the reign of our sovereign lord *James* the second now king of *England*, &c. at *Bushey*, in a certain place there called *Maryhill Ground*, took the cattle of the said *S.* to wit, six and thirty wether sheep, twelve ewe sheep, and eight lambs, and unjustly

Declaration in replevin.
Lill. Ent. 371.
3 Lev. 225.

* Cattle applied to hens and capons. Lib. Int. 141.

justly detained them against gages and pledges, until, &c. Wherefore the said *S.* says that he is injured, and hath damage to the value of ten pounds : and thereupon he brings suit, &c.

Avowry in proprio jure and recognizance as bailiff of the earl of Essex.

The locus in quo, &c. the freehold of defendant and the earl.

Took the cattle damage feasant. Bar.

Bar.

The Locus in quo, &c. Parcel of the manor of B.

Whereof defendant and the earl of Essex are lords.

And granted the locus in quo, &c. to plaintiff.

And the said Sir *W.* by *R. B.* his attorney, comes and defends the force and injury, when, &c. And the said Sir *W.* in his own right well avows, and as bailiff of *Algernoon* earl of *Essex* well acknowledges the taking the said cattle in the said place, in which, &c. And justly, &c. Because he says that the said place, in which, &c. the taking the said cattle is supposed to be done, contains, and at the said time in which the taking of the said cattle is supposed to be done, contained in itself two acres of pasture with the appurtenances in *Bushey* aforesaid, which said two acres of pasture with the appurtenances are, at the said time in which, &c. were the soil and freehold of the said Sir *W.* and *Algernoon* earl of *Essex*: And because the said cattle at the said time in which, &c. were in the said two acres of pasture eating the grass then growing in the same, and doing damage there, the said Sir *W.* in his own proper right well avows, and as bailiff of the said *Algernoon* earl of *Essex*, well acknowledges the taking the said cattle in the said place, in which, &c. And justly, &c. so doing damage there, &c.

And the said *S.* says, that the said Sir *W.* by the reason before alledged, ought not in his own proper right to avow, and as bailiff of the said earl to acknowledge the taking the said cattle in the said place in which, &c. as just; because he says that the said two acres of pasture in which, &c. are and at the said time in which, &c. and also from the time to the contrary whereof the memory of man is not, were parcel of the manor of *Bushey* and of the customary land of the said manor, and also demised and demisable by copy of court-roll of the same manor by the lord or lords of the same, or by his or their steward of the court of the said manor for the time being, to any person or persons willing to take the same in fee-simple or otherwise, at the will of the lord or lords, according to the custom of the said manor: And the said *S.* further says, that the aforesaid earl and Sir *W.* before the said time in which, &c. *to wit*, on the twenty-first day of *April* in the said first year of the reign of our said lord the present king, were lawfully lords of the said manor: And the said earl and Sir *W.* then being lords of the said manor, afterwards and before the said time in which, &c. *to wit*, on the same twenty-first day of *April* in the first year aforesaid at the court of the said earl

earl and Sir *W.* of their said manor then held for the said manor within the said manor at *Bushey* aforesaid in the county of *Hertford*, by one *T. S.* gent. then their steward of their said manor, by copy of court-roll of the said manor, granted the said two acres of pasture with the appurtenances, in which, &c. among other lands and tenements, to the said *S.* To have and to hold to the said *S.* and his heirs and assigns for ever, at the will of the lords according to the custom of the said manor :

And the said *S.* according to the custom of the said manor was then and there admitted tenant thereof, by virtue of which said grant and admission, the said *S.* before the same time in which, &c. into the said two acres of pasture with the appurtenances in which, &c. among other lands and tenements entered, and was and yet is seised thereof in his demesne as of fee-simple at the will of the lords, according to the custom of the said manor : And the said *S.* being so seised thereof before the said time in which, &c. put his said cattle into the said two acres of pasture in which, &c. to eat the grafs then growing in the same ; and the said cattle were in the said two acres of pasture in which, &c. eating the grafs then growing thereuntil the said Sir *W. P.* on the said eighteenth day of *May* in the first year aforesaid, at *Bushey* aforesaid, in the said two acres of pasture called *Maryhill Grounds*, in which, &c. took the said cattle of the said *S.* and unjustly detained them against gages and pledges until, &c. as the said *S.* above complains against him : And this he is ready to verify : Wherefore for that the said Sir *W. P.* above acknowledges the taking the said cattle, the said *S.* prays judgment and his damages by occasion of the taking and unjustly detaining the said cattle, to be adjudged to him, &c.

who was admitted tenant.

And the said Sir *W.* says, that well and true it is, that the said two acres of pasture with the appurtenances in which, &c. are, and at the said time in which, &c. and also from the time to the contrary whereof the memory of man is not, were parcel of the said manor of *Bushey* and of the customary land of the said manor, and demised and demisable by copy of court-roll of the said manor, by the lord or lords of the said manor, or by his or their steward of the court of the said manor for the time being, to any person or persons willing to take the same in fee-simple or otherwise, at the will of the lord or lords, according to the custom of the said manor : And that the said earl and Sir *W.* before the said time in which, &c. to wit, on the said twenty-first day of *April* in the said first year of the reign of our said lord the pre-

Replication.
Confesses that the Locus in quo, &c. is parcel of the manor of B.

That said earl and defendant were lords.

Granted to
plaintiff.

Who was ad-
mitted tenant.

But the lands of
the value of 28l.
per ann.

And a fine of
35l. was assessed
on the plaintiff.

sent king, were lawfully lords of the said manor: And the said earl and Sir *W.* then being lords of the said manor, afterwards and before the said time in which, &c. to wit, on the said twenty-first day of *April* in the said first year aforesaid, at *Bushey* aforesaid in the county of *Hertford* aforesaid, by the said *T. S.* then their steward of the court of their said manor, by copy of court-roll of the said manor, granted the said two acres of pasture with the appurtenances in which, &c. among other lands and tenements to the said *S.* To have and to hold to the said *S.* his heirs and assigns for ever, at the will of the lords according to the custom of the said manor; and that the said *S.* according to the custom of the said manor then and there was admitted tenant thereof; and that by virtue of the said grant and admission, the said *S.* before the said time in which, &c. into the said two acres of pasture with the appurtenances in which, &c. among other lands and tenements, entered and was seised thereof in his demesne as of fee, at the will of the lords, according to the custom of the said manor, as the said *S.* above in pleading has alledged: But the said Sir *W. P.* further says, that the said two acres of pasture with the appurtenances in which, &c. together with the other lands and tenements in the said copy mentioned, and by the said copy granted to the said *S.* and his heirs, and to which the said *S.* was as aforesaid admitted, at the said time of the said admission of the said *S.* in the same, were, and yet are, of the clear yearly value of twenty and eight pounds; and that the said earl and Sir *W.* by the said *T. S.* in the said full court of the said manor, held within the said manor on the twenty-first day of *April* in the said first year of the reign of our said lord the present king, the said *T. S.* being then steward of the earl and Sir *W.* then lords of the said manor of the said court of their said manor as aforesaid, after the admission of the said *S. T.* to the said two acres in which, &c. and the said other lands and tenements granted by the said copy to the said *S.* then and there assessed and appointed the sum of thirty and five pounds for a fine for the said grant to the said *S.* of the said two acres of pasture with the appurtenances in which, &c. and of the said other lands and tenements granted by the said copy in form aforesaid, to be paid by the said *S.* to the said earl and Sir *W.* being lords of the said manor as aforesaid, upon the first day of *May* then next ensuing, at the porch of the church of the parish of *Bushey* aforesaid in the said county of *Hertford*, and that the said *S.* then and there, *to wit*, at the said manor had notice of all and singular the

the said premisses: And the said Sir *W.* further says, that the said fine for the lands and tenements by the said copy in manner and form afore said granted to the said *S.* was a reasonable fine; And that the said *S. T.* although he had notice of the said premisses from the said lords of the said manor at the said court held as afore said at the said manor on the said twenty-first day of *April* afore said, did not pay to the said earl and Sir *W.* lords of the said manor, or to either of them, the said sum of thirty and five pounds assessed for the said fine in form afore said, upon the said first day of *May* next ensuing the admission of the said *S.* at the said porch of the parochial church of *Bushey* afore said; but then and there intirely refused, denied, and still does refuse to pay the said thirty and five pounds to the said earl and Sir *W.* by which the said *S. T.* forfeited to the said earl and Sir *W.* being lords of the said manor, whereof, &c. as afore said, all his said customary right, estate, title and interest of and in the said two acres of pasture, with the appurtenances in which, &c. and the said other lands and tenements specified in the said grant: After which said forfeiture made in form afore said, and before the said time in which, &c. the said earl and Sir *W.* being lords of the said manor as afore said, entered into the said two acres of pasture with the appurtenances, in which, &c. and were and yet are seised thereof in their demesne as of fee: And because the said cattle after the said entry, *to wit*, at the said time in which, &c. were in the said two acres of pasture with the appurtenances, in which, &c. eating the said grass then growing in the same and doing damage there, the said Sir *W.* as before in his own proper right well avows, and as bailiff of the said earl well acknowledges the taking the said cattle in the said place in which, &c. and justly, &c. so doing damage there, &c. And this he is ready to verify: Wherefore, as before, he prays judgment, and a return of the said cattle, together with his damages, costs and charges by him about his suit in this behalf expended, according to the form of the statute in such case lately made and provided, to be adjudged to him, &c.

And the said *S.* protesting that the said sum of thirty and five pounds for the said fine for the lands and tenements granted by the said copy to the said *S.* in manner and form afore said, was not a reasonable fine, as the said Sir *W.* has above by pleading alledged, For plea the said *S.* says, that there is, and, from the time to the contrary whereof the memory of man is not, hath been a custom within the said manor, used and approved within the said

Fine reasonable.

Plaintiff refused to pay it.

Whereby forfeited.

Wheeler and Honor, Raymond 42 Co.

Inst. 647 b.

Cro. Eliz.

Dalton and

Hammond 779.

Cro Ja. 617.

Gardner and

Norman.

Defendant and

the earl entered.

And were seised

in fee.

Cattle damage

feasant.

Rejoinder.

Protestando

Fine unreasonable.

Custom that the fine should not exceed a year's value.

Premises worth
28l. per annum.

Which plaintiff
tendered.

And defendant
refused.

Demurrer.

Cause.

said manor for the whole time aforesaid, *to wit*, that every person who should be admitted tenant to any customary lands or tenements of the said manor by copy of court-roll of the said manor, have been accustomed, and ought to pay to the lord or lords of the said manor for the time being, for a fine for his admission to such customary lands or tenements, so much money as such lands and tenements were worth by the year at the time of such admission, and not more: *And* the said S. in fact says, that the said two acres of pasture, with the appurtenances in which, &c. together with the other lands and tenements mentioned in the said copy, and by the said copy granted to the said S. and his heirs, and to which the said S. was admitted as aforesaid, at the time of the admission of the said S. to the same were worth, and are yet worth twenty and eight pounds by the year, and not more: *And* the said S. further says, that at the time of his said admission to the said tenements with the appurtenances, *to wit*, at the said court of the said manor held within the said manor on the said twenty-first day of *April* in the first year aforesaid, he the said S. was ready and offered to pay to the said Sir W. then one of the lords of the said manor, being then and there present in his own proper person, so much money as the said customary tenements with the appurtenances were worth by the year, at the time of the admission of the said S. to the same, *to wit*, twenty and eight pounds of lawful money of *England*; which said twenty and eight pounds the said Sir W. then and there intirely refused to take or accept of the said S. And this he is ready to verify: Wherefore, as before, he prays judgment, and his damages by occasion of the taking and unjustly detaining the said cattle, to be adjudged to him, &c.

And the said Sir W. says, that the plea of the said S. above by rejoining pleaded, and the matter therein contained, are not sufficient in law to bar the said Sir W. from having his avowry and cognizance aforesaid, and that he has no need and is not bound by the law of the land to answer to the said plea pleaded in manner and form aforesaid: And this he is ready to verify: Wherefore for default of a sufficient plea in this behalf the said Sir W. as before, prays judgment and a return of the said cattle, together with his damages, costs and charges by him about his suit in this behalf expended, according to the form of the statute in such case lately made and provided, to be adjudged to him, &c. *And* for cause of demurring in law to the said plea, the said Sir W. according to the form of the statute in such case lately made and provided, shews,
and

and to the court here demonstrates this cause following, *to wit*, that the value of the land is in estimation, and the said custom by the said *S.* above in pleading pretended and alledged, is uncertain, insufficient and void in law.

And the said *S.* for that in his said plea above by re-joinder.

joining pleaded he has above alledged sufficient matter in law to bar the said *Sir W.* from having his avowry and cognizance aforesaid, which he is ready to verify, which said matter the said *Sir W.* does not deny nor any way answer thereto, but intirely refuses to admit the verifying the same, as before, prays judgment, and his damages by occasion of taking and unjustly detaining the said cattle to be adjudged to him: And because the said justices here would advise themselves of and upon the premisses before they give judgment thereupon, a day is given to the said parties here until on the octave of *St. Hilary*, to hear their judgment thereupon; for that the said justices here are not yet, &c. At which day here come as well

Continuance.

the said *S.* as the said *Sir W.* by their attornies aforesaid: And upon this the premisses being seen, and by the justices here fully understood, it seems to the said justices here, that the said plea of the said *S.* above by rejoining pleaded, and the matter therein contained, are sufficient in law to bar the said *Sir W.* from having his avowry and cognizance aforesaid, as the said *S.* has above alledged; for which the said *S.* ought to recover against the said *Sir W.* his damages by occasion of taking and unjustly detaining the said cattle: But because it is not known what damages the said *S.* has sustained by occasion of the taking and unjustly detaining the said cattle, it is commanded to the sheriff, that by the oath of good and lawful men of the county aforesaid, he diligently inquire what damages the said *S.* has sustained, as well by occasion of the taking and unjustly detaining the said cattle, as for his costs and charges by him about his suit in this behalf expended; and that the sheriff make appear here from the day of *Easter* in fifteen days the inquisition which he shall make thereupon, under his seal, and the seals, &c. At which day the said *S.* comes here by his attorney aforesaid, and the sheriff, *to wit*,

Judgment for the plaintiff.

Inquiry awarded.

The return.

now sends here a certain inquisition taken before him at *Stevenage* in the county aforesaid, on the fifteenth day of *April* last past, by the oath of twelve, &c. by which it is found that the said *S.* sustained damages by occasion of the taking and unjustly detaining the said cattle, besides his costs and charges by him about his suit in this behalf expended, to fourpence.

Therefore

Judgment signed
3 May
2 Jac. 2.

Mercy.

Therefore it is considered, that the said *S.* recover against the said Sir *W.* his said damages to tenpence, found by the said inquisition in form aforesaid, and also nine pounds five shillings and twopence by the court here adjudged to the said *S.* at his request for his said costs and charges of increase, which said damages in the whole amount to nine pounds and six shillings: And the said Sir *W.* in mercy, &c.

Declaration in
replevin for a
mare taken in
the king's high
way.

Lil. Ent. 351.
Salk. 3 p. 8.
6 Mod. 102.
Pract. Reg.
157. Holt 627.
2 R. Raym.
1016.

Northampton, *J. B.* was summoned to answer *S. C.* of
to wit, a plea, wherefore he took a mare of
the said *S.*'s and unjustly detained her against gages and
pledges, &c. And whereupon the said *S.* by *W. L.* his
attorney, complains, that the said *J.* on the first day of
October in the twelfth year of the reign of our lord *Wil-*
liam the third late king of *England*, &c. at *Hardingston* in the
county aforesaid, in a certain place there called the
king's highway, took a mare of the said *S.*'s, and unjustly
detained her against gages and pledges until, &c. and
whereupon the said *S.* says that he is injured, and hath
damage to the value of 10*l.* and thereupon he brings
suit, &c.

Cognizance as
bailiff of lord
L.

And the said *J. B.* by *J. B.* his attorney comes and
defends the force and injury when, &c. and as bailiff of
the right honourable *W.* lord *L.* well acknowledges the
taking the said mare at the said time in which, &c. in a
certain place called the queen's high way, and unjustly,
&c. Because he says, that the same place contains, and
at the same time in which, &c. contained in itself half
a rood of land with the appurtenances in *Hardingston*
aforesaid, which said half rood of land long before, and at
the said time in which, &c. was parcel of a certain an-
cient messuage in *Hardingston* aforesaid, which said mes-
suage long before and at the said time in which, &c.
was the soil and freehold of the said lord *L.* and because
the said mare at the said time in which, &c. was in the
said half rood of land in which, &c. doing damage
there, the said *J.* as bailiff of the said *W.* lord *L.* well
acknowledges the taking the said mare in the said
place in which, and justly, &c. doing damage there,
&c. without this, that the said *J.* took the said mare in a
certain place called the king's highway, as the said *S.*
hath declared against him: And this he is ready to ve-
rify: Whereupon he prays judgment, and a return of
the said mare to be adjudged to him, &c.

The locus in
quo his free-
hold.

And the mare
there damage-
seafant.

Traverse not
taken in king's
highway.

And

And the said S. says, that the said J. B. ought not, as bailiff of the right honourable W. lord L. to acknowledge the taking the said mare to be just; because he says, that he the said J. B. at the said time in which, &c. took the said mare in the said place then called the king's highway, in manner and form as the said S. above by declaring has alledged: And this he prays may be inquired of by the country.

Replication,
took in the
king's highway.

And the said J. says, that he has no need, nor is he bound by the law of the land, in any manner to answer to the said plea of the said S. above by replying pleaded, because he says, that the said plea is not sufficient in law to maintain his said declaration: And this he is ready to verify: Wherefore for default of a sufficient replication in this behalf the said J. as before prays judgment, and that the said declaration may be quashed, &c.

Demurrer in
abatement.

And the said S. for that he has above alledged sufficient matter in law for him the said S. to maintain his action and declaration aforesaid; which he is ready to verify; which said matter the said J. does not deny, nor in any manner answer thereto, but has entirely refused to admit the verifying the same; the said S. prays judgment, and his damages by occasion of the taking and unjustly detaining the said mare, to be adjudged to him, &c.

Joinder.

And because the justices here would advise of and upon the premisses before they give judgment thereupon, a day is given to the said parties here until * from the day of St. Michael in three weeks to hear their judgment thereupon, for that the said justices here are not yet, &c.

Continuance by
Cur advisare
vult.

At which day come here as well the said S. as the said J. by their attornies aforesaid; and upon this the premisses being seen, and by the justices here fully understood, it seems to the said justices here that the said plea of the said S. above by replying pleaded is sufficient in law to maintain his said declaration as the said S. has above alledged; for which the said S. ought to recover his damages by occasion of the premisses against the said J. but because it is not known what damages the said S. has sustained by occasion of the premisses, it is commanded to the sheriff, that by the oath of twelve good and lawful men of his county, he diligently inquire what damages the said S. has sustained, as well by occasion of the premisses, as for his costs and charges by him about his suit in this behalf expended; and that the sheriff make appear here the inquisition which

Judgment for
the plaintiff.
1 Sid. 189, 190.
1 Ventris 135,
136.
Cro. Eliz. 202.

Inquiry award-
ed.

he

* No such return. See Vol. I. p.

The return.

he shall thereupon take on the octave of *St. Hilary* under his seal and the seals, &c. *At which day* here comes the said *S.* by his attorney aforesaid, and the sheriff, *to wit*, Sir *C. C. bart.* now sends here a certain inquisition taken before him at the town of *Northampton* in the county aforesaid, on the nineteenth day of *January* last past, by the oath of twelve, &c. By which it is found, that the said *S.* hath sustained damages by occasion of the premisses, besides his costs and charges by him about his suit in this behalf expended, to 80s. and for those costs and charges to 2d. *It is therefore* considered, that the said *S.* recover against the said *J.* his damages to 80s. and 2d. found by the said inquisition in form aforesaid; and also 12l. 17s. 4d. by the court here adjudged to the said *S.* at his request for his said costs and charges.

Judgment.

Errors assigned.

Afterwards, to wit, on next after

in this same term before our lady the queen at *Westminster* the said *J.* comes by *A. M.* his attorney, and says, that in the record and process aforesaid, and also in giving the said judgment, there is manifest error in this, *to wit*, that by the said record it appears, that the said judgment in form aforesaid given was given for the said *S. C.* against the said *J. B.* where by the law of the land of this kingdom of *England* judgment in the said plea ought to have been given for the said *J. B.* against the said *S. C.* There is also error in this, *to wit*, that by the said record it appears, that the said *J.* was summoned to answer the said *S.* of the plea aforesaid, yet no original writ between the parties aforesaid of the plea aforesaid is filed of record, nor remains of record in the said court of our lady the queen of the bench; and therefore in that there is manifest error. *There* is also error in this, *to wit*, that by the said record it appears, that the said *S.* came and appeared in the said court of our said lady the queen of the bench by *W. L.* his attorney, yet the said *W. L.* had no warrant of attorney of record by writ of our lady the present queen, nor without writ, to warrant his appearance for the said *S.* in the plea aforesaid: *And* the said *J.* prays separate writs of our lady the queen, *to wit*, one to be directed to the chief justice of our said lady the queen of the bench, and the other to the *Custos Brevirum* of our said lady the queen of the bench aforesaid, to certify our said lady the present queen the truth thereupon more fully; and it is granted to him, &c. *Upon which*, *Tuesday* next after the fifteenth day of the Holy *Trinity* is given by the court of our said lady the present queen heré to return to the court of our said lady the queen

No original writ.

No warrant of attorney.

Certiorari awarded.

Rule to return Certiorari.

queen before the queen herself at *Westminster* the said several writs of *certiorari* above prayed; the same day is given to the said S. at the same place, &c. And the said chief justice of the bench aforesaid, and the said *Custos Brevium* of our said lady the present queen at that day did not send the said several writs, nor did either of them, &c. nor did they do any thing thereupon, nor did either of them do any thing thereupon: And thereupon the said S. freely comes here into court, and says, that there is not any error either in the record and proceedings aforesaid, or in giving the said judgment; and he prays that the court of our said lady the queen now here may proceed to the examination as well of the record and proceedings aforesaid, as of the matter aforesaid above assigned for error, and that the said judgment may be in all things affirmed: But because the court of our said lady the queen now here is not yet advised about giving judgment of and concerning the premisses, day is therefore given to the said parties to come before our lady the queen until in one month of *Easter*, wheresoever, &c. to hear judgment of and upon the same premisses, for that the court of our said lady the queen now here is not yet advised thereof. At which day before our lady the queen at *Westminster* the said parties come by their attornies aforesaid: Whereupon the court of our said lady the queen now here, having seen and fully understood and diligently examined as well the said record and proceedings, and the judgment thereupon given, as the said causes and matters above assigned and alledged for error, for that it seems to the court of our said lady the queen here, that the said judgment is in nothing vitious or defective, and that there is no error in the said record; it is considered that the said judgment be in all things affirmed, and stand in its full force and effect; the said causes above assigned for error in any wise notwithstanding, &c. And it is further considered by the said court, that the said S. recover against the said J. 12l. adjudged by the court of our lady the queen now here to the said S. by his assent, according to the form of the statute thereupon lately made and provided, for his costs, charges and damages which he has sustained by occasion of the delay of the execution of the said judgment, by pretence of prosecuting the said writ of our lady the queen for correcting errors of and upon the premisses: And that the said S. thereupon have his execution, &c.

Non miser
br'ia.In nullo est er-
ratum.

Continuance.

Judgment af-
firmed.

Costs.

Scire

Scire Facias.

Common Pleas.

Trinity term in the 10th year of king George
the third.

Scire facias by
an administra-
tor de bonis
against heir at
law and terte-
nants.

London, **I**T was commanded to the sheriffs of London, to wit, *Whereas T. M.* lately in the court of the lord *James II.* late king of England, (that is to say) in the term of the Holy Trinity in the second year of his reign, before Sir *H. B.* knt. and his companions, then justices of the late king of the common bench at *Westminster*, by the judgment of the same court had recovered against *T. T.* late of the parish of *St. Andrew Holborn* in the county of *Middlesex*, esq; as well a debt of 500l. as 90s. which were adjudged in the same court to the said *T. M.* for his damages which he had sustained by reason of the detaining of that debt, whereof he is convicted, as by the record and proceedings thereof now remaining in the said court of our present sovereign lord the king, before his justices at *Westminster* aforesaid, manifestly appeareth: Nevertheless execution of the judgment aforesaid still remaineth to be made; and as well the said *T. M.* as the said *T. T.* are dead since the recovering the said judgment, as our said present sovereign lord the king hath received information by *W. S.* administrator of the goods and chattels which were of the said *T. M.* at the time of his death not administered by *A.* late wife of him the said *W. S.* deceased, and *T. M.* her sister also deceased, late executrixes of the testament of the said *T. M.* And his said now majesty being willing, &c. that by good and lawful men they should warn *W. T.* cousin and heir of the said *T. T.* deceased, and the tenants of all the lands and tenements which were of the said *T. T.* on the morrow of the Holy Trinity in the said 2d year of the said late king *James II.* (on which day the judgment aforesaid was given) or at any time afterwards, in their bailiwick, that they should be here at this day (that is to say) from the day of *St. Michael* in three weeks, to shew if they have or know of any thing, &c.

&c. why the said *W. S.* should not have execution of the debt and damages aforesaid, to be levied of those lands and tenements, according to the form and effect of the recovery aforesaid, &c. if, &c. And now here at this day cometh as well the said *W. S.* by *T. B.* his attorney, as *J. T.* esq; by *C. W.* his attorney; and the said *W. T.* although on the fourth day of the plea aforesaid he was solemnly demanded came not; and the sheriffs, *to wit*, *W. R.* and *B. R.* esqrs. now return, that by virtue of the said writ to them directed, by *J. C.* and *R. R.* good and lawful men of their bailiwick, they had warned the said *W. T.* cousin and heir of the said *T. T.* and the said *J. T.* esq; the tenant of 18 messuages with the appurtenances in the parish of *St. Andrew Holborn* in their bailiwick (*to wit*) one of them with the appurtenances then or late in the tenure or occupation of *E. M.* or her assigns [the other 17 messuages described in like manner] which were the lands and tenements of the said *T. T.* on the day of giving the judgment aforesaid, that they be here on this day (*to wit*) from the day of *St. Michael* in three weeks, to shew as the writ doth require; and the said sheriffs did certify that there were no other tenants, nor was there any other tenant of any other lands or tenements which were his the said *T. T.*'s on the day of giving the judgment aforesaid, or at any time after, in their bailiwick, whom they could warn: And hereupon the said *W. S.* saith, that administration of all the goods and chattels which were of the said *T. M.* at the time of his death not administered by the said *A.* deceased, late wife of the said *W. S.* and the said *T. M.* deceased, the executrixes of the testament of the said *T. M.* after the deaths of the said *A.* and *T.* (*to wit*) on the 9th day of *August* in the 10th year of the reign of our late sovereign lord king *George I.* at *London*, in the parish of *St. Mary le Bow* in the ward of *Cheap*, was committed by *W.* by divine Providence archbishop of *C.* primate of all *England* and metropolitan, to him the said *W. S.* and he produceth here in court the letters of administration of the said archbishop, with the testament of the said *T. M.* annexed, which testifieth the commitment of the administration aforesaid to him in form aforesaid, and he prayeth execution of the debt and damages aforesaid against the said *W. T.* to be levied of the lands and tenements which were of the said *T. T.*'s at the aforesaid time of giving the judgment aforesaid, or at any time since, and which descended from the said *T. T.* to the said *W. T.* as his cousin and heir, by his

The return.

Letters of administration.

Profert.

his default, and also against the said *T. T.* to be levied of the messuages aforesaid, with the appurtenances, whereof he is returned tenant as aforesaid, to be adjudged to him the said *W. S.*

Double plea of
tertenant,

That the money on the judgment was paid.

And that the debt in the original judgment was not seised in fee of the messuage, &c. in the writ of Scire facias.

And the said *J. T.* by *C. W.* his attorney cometh and saith, that the said *W. S.* ought not to have execution of the debt and damages aforesaid, against him the said *J. T.* to be levied of the tenements aforesaid, of which he is above returned tenant, because he saith that all the money due upon the said judgment in the said writ mentioned was paid and satisfied by the said *T. T.* to the said *T. M.* in the same writ named, *to wit*, at London, in the parish of *St. Mary le Bow* in the ward of *Cheap*; and this he is ready to verify: Wherefore he prayeth judgment if the said *W. S.* ought to have execution against the said *J. T.* of the debt and damages aforesaid, to be levied of the tenements aforesaid, of which he is above returned tenant; and the said *T. T.* by force of the statute in that case made and provided, and by leave of the court here granted to him, for a further plea saith, that the said *W. S.* ought not to have execution of the debt and damages aforesaid against the said *J. T.* to be levied of the tenements aforesaid, of which he is above returned tenant as aforesaid, because he saith, that the said *T. T.* on the day when the said judgment in the said writ named was given, or ever after, was not seised of the tenements aforesaid, of which the said *J. T.* is above returned tenant, or of any part thereof, in his demesne as of fee, and this he is ready to verify: Wherefore he prayeth judgment if the said *W. S.* ought to have execution against him of the debt and damages aforesaid, to be levied of the said tenements, of which he is above returned tenant as aforesaid, &c.

Geo. Wilson.

Replication.

To the first part,
that the money
was not paid.

Issue thereon.
To the second
part,

And the said *W. S.* saith, that he by any thing by the said *J. T.* above in pleading alledged ought not to be barred from having execution of the debt and damages aforesaid against the said *J. T.* to be levied of the tenements aforesaid, with the appurtenances, of which he is returned tenant as aforesaid; because as to the plea of the said *J. T.* first above pleaded, he the said *W. S.* saith that all the money due upon the said judgment in the said writ mentioned was not paid or satisfied by the said *T. T.* to the said *T. M.* in the said writ named, as the said *J. T.* hath above in pleading alledged; and this he prayeth may be inquired by the country; and the said *J. T.* doth likewise the same. And as to the plea of the

the said *J. T.* last above pleaded, he the said *W. S.* saith, that before the said day when the said judgment was given, *to wit*, on the 10th day of *January* in the year of our Lord 1685. the said *T. T.* was seised of the tenements afore said with the appurtenances, of which the said *J. T.* is above returned tenant, in his demesne as of fee; and being so seised on the 1st day of *April* in the 2d year of the reign of our lord *James II.* late king of *England*, &c. by one indenture made at the parish of *St. Andrew Holborn* afore said, between the said *T. T.* esq; *R. A. T. A. E. C.* and *T. T.* gent. by their respective names of *T. T.* of the parish of *St. Andrew Holborn, London*, esq; *R. A.* of *Newport Pagnel* in the county of *Bucks*, esq; *T. A.* of *Bedwel Park* in the county of *Hertford*, esq; *E. C.* of *Gray's Inn* in the county of *Middlesex*, esq; and *T. T.* of the parish of *St. Andrew Holborn, London*, gent. and *E. B.* and *J. W.* by their respective names of *E. B.* of *Lincoln's Inn*, in the county of *Middlesex*, esq; and *J. W.* of *Gray's Inn* afore said, of the other part; one part of which indenture sealed with the seals of the said *T. T.* esq; *R. A. T. A. E. C.* and *T. T.* gent. he the said *W. S.* bringeth here into court, the date whereof is the said day and year last above mentioned, he the said *T. T.* esq; for and in consideration of a certain sum of money to him the said *T. T.* esq; by the said *E. B.* and *J. W.* in hand paid, did bargain and sell, and they the said *R. A. T. A. E. C.* and *T. T.* gent. did ratify and confirm the tenements afore said, whereof the said *J. T.* is returned tenant as afore said with the appurtenances, together with other lands, unto the said *E. B.* and *J. W.* To have and to hold unto the said *E. B.* and *J. W.* their executors, administrators and assigns, from the day next before the day of the date of the said indenture unto the end and term of one year then next following and fully to be complete and ended, as by the said indenture more fully doth appear: by virtue of which bargain and sale, and by force of the statute for transferring of uses into possession made at *Westminster* in the county of *Middlesex*, on the 4th day of *February* in the 27th year of the reign of the lord *Henry VIII.* late king of *England*, &c. the said *E. B.* and *J. W.* were possessed of the tenements afore said, whereof the said *J. T.* is so returned tenant, with the appurtenances, for the said term of one year. And the said *E. B.* and *J. W.* being so possessed thereof, and the said *T. T.* esq; being so seised of the reversion thereof in his demesne as of fee, afterwards, *to wit*, on the 2d day of *April* in the 2d year of the reign of the said lord *James II.* late king of *England*, &c. by one indenture *quadripartite*

That the defendant in the judgment was seised in fee. And did by lease.

Profert.

And release

Profert.

Convey.

To make a tenant to the Præcipe, in order to suffer a common recovery.

The uses thereof declared.

partite made at the said parish of *St. Andrew Holborn* between the said *T. T.* esq; *R. A. T. A. E. C.* and *T. T.* gent. by their respective names of *T. T.* of the parish of *St. Andrew Holborn, London*, esq; *R. A.* of *New Port Pagnel* in the county of *Bucks*, *T. A.* of *Bedwel Park* in the county of *Hertford*, esq; *E. C.* of *Gray's Inn* in the county of *Middlesex*, esq; and *T. T.* of the parish of *St. Andrew Holborn, London*, gent. of the first part, the said *E. B.* and *J. W.* by their respective names of *E. B.* of *Lincoln's Inn* in the county of *Middlesex*, esq; and *J. W.* of *Gray's Inn* aforesaid, esq; of the second part, *E. F.* and *G. L.* by their respective names of *E. F.* of *Gray's Inn* aforesaid, esq; and *G. L.* of the *Inner Temple, London*, esq; of the third part, and *W. F.* by the name of *W. F.* of *Hatton Garden* in the said county of *Middlesex*, esq; of the fourth part, one part of which indenture sealed with the seals of the said *T. T.* esq; *R. A. T. A. E. C.* and *T. T.* gent. he the said *W. S.* bringeth here into court, the date whereof is the same day and year last above mentioned, he the said *T. T.* esq; did grant, and they the said *R. A. T. A. E. C.* and *T. T.* gent. the reversion of the tenements aforesaid, whereof the said *J. T.* is so returned tenant, with the appurtenances, together with other lands, to the said *E. B.* and *J. W.* and their heirs: To have and to hold unto the said *E. B.* and *J.* their heirs and assigns for ever, to the use of them, their heirs and assigns for ever; To the intent they might become perfect tenants of the freehold of the tenements aforesaid, in order and to the intent that a common recovery thereof might be had and suffered in manner and form in the same indenture specified: And it was declared by the same indenture, that the said recovery so to be had and suffered, and all and every other recovery or recoveries, conveyances and assurances whatsoever before that time had, levied, suffered or executed, or hereafter to be had, levied, suffered or executed of the tenements aforesaid, whereof the said *J. T.* is returned tenant, with the appurtenances, or any of them, by or between the said parties to the same indenture or any of them, should be and enure, and are by the same indenture declared to be and enure to the use of Sir *R. A.* and *J. B.* of the county of *Cambridge*, esq; and their heirs, during the joint lives of the said *T. T.* esq; and *E.* his wife, and from and after the determination of that estate, to the use of the said Sir *R. A.* and *J. B.* and their heirs, for and during the lives of the said *T. T.* esq; and *E.* his wife, and the life of the longer liver of them; and from and after the decease of the said *T. T.* esq; and *E.* his wife, and of the survivor

survivor of them, that then they the said *R. A.* and *J. B.* and their heirs and assigns, should stand and be seised of the tenements aforesaid with the appurtenances, to the use of the first son of the body of the said *T. T.* esq; on the body of the said *E.* begotten, and of the heirs male of the body of such first son issuing; and for default of such issue, then to the use of the second, third, fourth, fifth, sixth, seventh, and all and every other son and sons of the body of the said *T. T.* esq; on the body of the said *E.* begotten, severally, successively, and in remainder, one after another, as they should be in priority of birth, and of the heirs male of the body and bodies of every such son and sons issuing; the elder of such sons and the heirs male of his body issuing to take before the younger of such sons and the heirs male of his body issuing; and for default of such issue, to the use of the said Sir *R. A.* and *J. B.* their executors, administrators and assigns, for the term of 500 years, without impeachment of waste, in which indenture is contained a proviso, that if the said *T. T.* esq; should happen to die without any issue female of his body on the body of the said *E.* begotten, or without leaving the said *E.* with child of one or more daughter or daughters that should be born alive; that then the estate so limited to the said Sir *R. A.* and *J. B.* for 500 years, should cease, determine, and be utterly void, as by the said indenture, amongst other things, more fully doth appear. By virtue whereof the said *E. B.* and *J. W.* were seised of the tenements aforesaid, whereof the said *J. T.* is so returned tenant, with the appurtenances, in their demesne as of fee; and being so seised, afterwards pursuant to the said indenture quadripartite, *to wit*, on the 12th day of *February* in the 2d year of the reign of the said lord *James II.* late king of *England*, &c. the said *E. F.* and *G. L.* prosecuted out of the court of the said late king *James II.* of his chancery at *Westminster* aforesaid, a certain writ of the said late king of entry upon a disseisin in the *post* against the said *E. B.* and *J. W.* then tenants of the freehold of 60 messuages, with the appurtenances in the parishes of *St. Andrew Holborn* and *St. Dunstan in the West*, of which the tenements aforesaid with the appurtenances, whereof the said *J. T.* is returned tenant as aforesaid, were parcel, to the then sheriffs of *London* directed, by which writ the said late king commanded the said late sheriffs of *London* that they should command the said *E. B.* and *J. W.* that justly and without delay they should render to the said *E. F.* and *G. L.* the said 60 messuages with the appurtenances, which they the said *E. F.* and *G. L.*

Recovery.

Writ of entry.

claimed to be their right and inheritance, and into which they the said *E. B.* and *J. W.* had not then entry, but after a disseisin which *H. H.* thereof unjustly and without judgment had made of them the said *E. F.* and *G. L.* within 30 years then last past, as they then said; and whereupon they then complained, that the said *E. B.* and *J. W.* then deforced them there; and unless they did so, and that the said *E. F.* and *G. L.* should make the said then sheriffs secure of prosecuting their claim, then they should summon by good summoners the said *E. B.* and *J. W.* to be before the justices of the said late king here, *to wit*, at *Westminster* aforesaid, from the day of *Easter* in 15 days then next following, to shew wherefore they did not; and that the said then sheriffs should have there the

Parties appear. summoners, and that writ: At which said 15th day from the day of *Easter*, before Sir *H. B.* knight, and his companions, then justices of the said late king of the bench here, came as well the said *E. F.* and *G. L.* as the said *E. B.* and *J. W.* in their proper persons, and *B. T.* and *T. K.* knights, then sheriffs of *London* aforesaid, then

Writ returned. and there returned the said writ to them in form aforesaid directed, in all things served and executed, *to wit*, that the said *E. F.* and *G. L.* had found to the said sheriffs pledges of prosecuting the said writ, *to wit*, *John Doe* and *Richard Roe*; and that the said *E. B.* and *J. W.* were summoned by *J. D.* and *R. F.* And thereupon the said *E. F.* and *G. L.* in their proper persons declared against the said *E. B.* and *J. W.* then tenants of the freehold of the said 60 messuages with the appurtenances, of which the tenements aforesaid with the appurtenances, whereof the said *J. T.* is returned tenant as aforesaid, then were parcel, and demanded against the said *E. B.* and *J. W.* the said 60 messuages with the appurtenances, as their right and inheritance, and into which the said *E. B.* and *J. W.* had no entry, but after a disseisin which *H. H.* thereof unjustly and without judgment made of them the said *E. F.* and *G. L.* within 30 years, &c. And whereupon they said, that they were seised of the said 60 messuages with the appurtenances in their demesne as of fee and right in the time of peace in the time of the then lord the king, by taking the profits thereof to the value, &c. And into which, &c. And thereof they then brought

Count. suit, &c. And the said *E. B.* and *J. W.* in their proper persons then came and defended their right, when, &c. And thereupon vouched to warranty the said *T. T.* esq; who was then likewise present in the same court in his proper person, and did freely warrant to them the said messuages with their appurtenances; and thereupon the

Tenant vouches over. said

said *E. F.* and *G. L.* did demand against him the said *T.* Count against
 tenant by his warranty the messuages afore said with the first vouchee.
 appurtenances, in form afore said; and whereupon they
 then said, that they were seised of the messuages afore-
 said with the appurtenances in their demesne as of fee
 and right, in the time of peace in the time of the then
 lord the king, by taking the profits thereof to the value,
 &c. and into which, &c. and thereof they then brought
 suit, &c. And the said *T. T.* tenant by his warranty then First vouchee
 and there defended his right, when, &c. and thereupon vouches over.
 further voucheth to warranty *J. W.* who was then like-
 wise present in the same court in his proper person, and
 did freely warrant to him the said messuages with their
 appurtenances, &c. And thereupon the said *E. F.* and *G.* Count against
 did demand against him the said *J. W.* tenant by his common
 warranty the messuages afore said with the appurtenances vouchee.
 in form afore said, &c. And whereupon they then said,
 that they were seised of the messuages afore said, with
 the appurtenances, in their demesne as of fee and right
 in the time of peace, in the time of the then lord the
 king, by taking the profits thereof to the value, &c. and
 into which, &c. and thereof they then brought suit, &c.
 And the said *J. W.* tenant by his warranty then defended Common
 his right, when, &c. And he then said, that the said *H. H.* vouchee pleads.
 did not disseise the said *E. F.* and *G.* of the messuages
 afore said, with the appurtenances, as they the said *E. F.*
 and *G.* by their writ and count afore said had above sup-
 posed; and of this he then put himself upon the coun-
 try, &c. and the said *E. F.* and *G.* then prayed leave to Imparlance.
 imparl thereto, and had it, &c. And afterwards they
 the said *E. F.* and *G.* came again into the same court
 here in that same term in their proper persons: And
 the said *J. W.* altho' he was solemnly demanded, did not
 return, but departed in despite of the court, and made
 default; therefore it was then and there considered by
 the same court, that the said *E. F.* and *G.* should recover
 their seisin against the said *E. B.* and *J. W.* of the mes-
 suages afore said, with the appurtenances; and that the
 said *E. B.* and *J. W.* should have of the land of the said
T. T. to the value, &c. and that the said *T. T.* moreover
 should have of the land of the said *J. W.* to the value,
 &c. and that the said *J. W.* should be in mercy, &c. And
 thereupon the said *E. F.* and *G.* then prayed the writ of
 the then said lord the king to the then sheriffs of *London*
 afore said to be directed, to make plenary seisin to him of
 the messuages afore said, with the appurtenances; and it
 was granted to him returnable here, on the morrow of
 the ascension of our Lord: At which day came here the
 said

said *E. F.* and *G.* in their proper persons ; and the said then sheriffs of *London*, to wit, *B. T.* and *J. K.* kns. returned, that they by virtue of that writ to them directed, did on the 1st day of *May* then last past make full seisin to them the said *E. F.* and *G. L.* of the messuages aforesaid, with the appurtenances, as by the said writ was commanded to them, &c. as by the said record and process thereof remaining here in court more fully it doth appear. Which recovery, and the execution thereof in form aforesaid had, were had as to the tenements aforesaid, with the appurtenances, whereof the said *J. T.* is returned tenant as aforesaid, to the uses in the said indenture quadripartite herein before specified, and to no other use. And the said *W. S.* further saith, that the said *T. T.* never had any issue male or female of his body on the body of the said *E.* his wife begotten born alive. And the said *W. S.* further saith, that the said *E.* before the day of the suing forth of the aforesaid writ of *Scire Facias*, to wit, on the 1st day of *July* in the year of our Lord 1769, at the parish of *St. Andrew Holborn* aforesaid died ; and this the said *W. S.* is ready to verify : Wherefore he prayeth judgment, and his execution of the debt and damages aforesaid against the said *J. T.* of the aforesaid tenements, with the appurtenances, of which he is so returned tenant as aforesaid, to be adjudged to him the said *W. S.* &c.

Joseph Sayer.

Demurrer.

And the said *J. T.* saith, that the replication aforesaid of the said *W. S.* to the plea of the said *J. T.* last above pleaded, and the matter therein contained are not sufficient in law for the said *W. S.* to have execution against the said *J. T.* of the debt and damages aforesaid, to be levied of the said tenements of which he is above returned tenant as aforesaid, to which said replication in manner and form above pleaded the said *J. T.* hath no need nor is he obliged by the law of the land to answer ; and this he is ready to verify : Wherefore for want of a sufficient replication in his behalf, the said *J. T.* prayeth judgment, and that the said *W. S.* may be barred from having execution against him of the debt and damages aforesaid to be levied of the said tenements of which he is above returned tenant as aforesaid, &c.

Geo. Wilson.

Joinder.

And the said *W. S.* forasmuch as he hath alledged sufficient matter in law in his replication aforesaid to the aforesaid plea of the said *J. T.* last above pleaded, to have execution against the said *J. T.* of the debt and damages

gages aforesaid, to be levied of the aforesaid tenements, whereof he the said *J. T.* is above returned tenant as aforesaid, which he is ready to verify, which said matter the said *J. T.* doth not gainsay, nor any wise answer thereto, but doth wholly refuse to admit the said replication, as before prayeth judgment and execution against the said *J. T.* of the debt and damages aforesaid, to be levied of the tenements aforesaid, whereof he is above returned tenant as aforesaid, to be adjudged to him.

John Belfield.

To the King's most Excellent Majesty.

The humble memorial of T. earl of E. deputy (with your majesty's approbation) to C. duke of N. earl marshal and hereditary marshal of England,

Sheweth,

THAT his late majesty king *George I.* was graciously pleased by his letters patent, bearing date the 18th day of *June* in the 6th year of his reign, to constitute and appoint *J. W.* esq; *Somerset* herald of arms during him his good behaviour; A memorial to his majesty for a Scire Facias to repeal letters patent.

That the said *J. W.* *Somerset* herald, hath for a course of many years last past absented himself from his duty of attending your majesty and your majesty's late royal father at court and parliament;

That the college of arms have been greatly injured by the said *J. W.*'s receiving fees without doing the duties incumbent on the said office, or accounting and paying his proportion towards the incident charges thereof;

That the said *J. W.* hath likewise presumed to publish the arms of the nobility and gentry of *England* in the margins of maps he hath lately published, without leave of the crown or consent of the officers of arms, whose rights and interests are thereby invaded.

Your

Scire facias.

Your memorialist therefore hereby submits the premisses to your majesty's royal consideration, and prays your majesty will be graciously pleased to issue your royal warrant to your majesty's attorney general, thereby authorising and directing him to cause a *Scire facias* to be sued out in your majesty's name, for repealing the said letters patent of the said *J. W. Somerset* herald, for such his misdemeanors and neglect of duty, he being (as your memorialist most humbly conceives) unworthy to continue longer in your majesty's service.

And your memorialist

shall ever pray.

Effingham M.

Whitehall, June 18, 1777.

His majesty is graciously pleased to refer this memorial to Mr. attorney or Mr. solicitor general to consider thereof, and report his opinion, what his majesty may fitly do therein. Whereupon his majesty will declare his further pleasure.

Francis North.

George R.

Warrant for a
Scire facias to
repeal J. W.'s
patent.

WHEREAS our right trusty and well beloved cousin *T. earl of Effingham*, Deputy (with our approbation) to our right trusty and right intirely beloved cousin *C. duke of N. earl marshal*, and hereditary marshal of *England*, has by his memorial humbly represented unto us, that our late royal Father was graciously pleased by his letters patent, bearing date the 18th day of *June* in the 6th year of his reign, to constitute and appoint *J. W. esq; Somerset* herald of arms, during his good behaviour; that the said *J. W.* has for a course of many years last past absented himself from his duty of attending us and our late royal father at court and parliament; that the college of arms have been greatly injured by the said *J. W.*'s receiving fees without doing the duties incumbent on the said office, or accounting and paying his proportion towards the incident charges thereof; that the said *J. W.* has likewise presumed to publish the arms of the nobility and gentry of *England* in the margins of maps he has lately published, without our leave or consent

sent of the officers of arms, whose rights and interests the memorial states were thereby invaded; the memorialist therefore prays that we would be graciously pleased to issue our royal warrants to you our attorney general, thereby authorising and directing you to cause a *Scire Facias* to be sued out in our name for repealing the said letters patent of the said *J. W.* for such his misdemeanors and neglect of duty, and as unworthy to continue longer in our service: And whereas we having referred the said memorial to you or our solicitor general; our said solicitor general by his report thereupon has humbly certified us, that upon receipt of the said memorial he caused notice thereof and a copy to be sent to the said *J. W.* and he has been attended by the solicitor of the memorialist and the said *J. W.* and also by *J. W.* himself, and upon considering the affidavits and arguments on both sides, our said solicitor general is humbly of opinion that the said *J. W.* has been guilty of great neglect of duty, for which he is liable to have a *Scire facias* brought in our name in order to repeal his patent, unless we shall be graciously pleased to accept of his excuses, and not put him to undergo a trial. But as it may be necessary with regard to many offices where no deputy can be made, and personal attendance is required, that they should be given to understand that such neglects of duty are not to be slightly passed over: And as the said *J. W.* will have an opportunity of making his defence upon a trial, and even after a conviction it will still be in our power to suspend the entering of any judgment to vacate the patent; he humbly conceives it may be fitting for us to order a *Scire Facias* to be brought to repeal the said *J. W.*'s patent; and for that purpose to issue our royal warrant to you, authorising and directing you to cause such *Scire facias* to be sued out, if we shall be pleased so to do. We taking the premisses into our royal consideration are graciously pleased to condescend thereunto. Our will and pleasure therefore is, that you sue out and prosecute a writ of *Scire facias* in our name, for repealing the said *J. W.*'s patent. And we do hereby authorise and require you to do and perform all matters and things that may be requisite and necessary in that behalf; and for so doing this shall be your warrant. Given at our court at *Kennington* the 7th day of *September* 1777, and in the 17th year of our reign.

By his majesty's command.

*To our trusty and well
beloved our attorney
general.*

Francis North.

A draught

A draught of *Scire facias* is to be prepared, and the attorney signs under it as follows :

Attorney general's Fiat.

Let there be a writ of *Scire facias* issued according to the tenor within mentioned, dated this 23d day of October 1777.

E. Thurlow.

The attorney general's fee is 2l. 2s. 0d.
His clerk's ——— ol. 13s. 4d.

Scire facias to revoke letters patent granted of the office of Somerset herald. Recital of the letters patent.

GEORGE the Third, by the grace of God, of *Great Britain, France, and Ireland*, king, defender of the faith, &c. To the sheriff of *Middlesex* greeting. *Whereas* our late royal grandfather by his letters patent under his great seal of *Great Britain*, bearing date at *Westminster* the 20th day of *June* in the 6th year of his reign, did of his special grace, and of his certain knowledge and mere motion, for himself his heirs and successors, make, nominate and create, erect, constitute and invest *J. W.* of *B.* in his county of *York*, esq; one of his heralds at arms, and gave him that name commonly called *Somerset*; and by the same letters patent gave and granted the stile, title, liberties and preeminences, with such office convenient and agreeing of ancient time accustomed, which said office *S. S.* esq; otherwise *Somerset*, then deceased, then lately had and enjoyed, To have and exercise the said office, and the name, stile, title, liberties and preeminences afore said, to the said *J. W.* otherwise *Somerset*, as long as he should behave himself well in the same office. And further, our said late royal father did by his said letters patent, for himself, his heirs and successors, grant to the said *J. W.* for the exercise of the said office, a certain annuity or annual rent of 40 marks of good and lawful money of *Great Britain*, to be had and received by the said *J. W.* otherwise *Somerset*, yearly, as long as he should behave himself well in the same office, from the treasurer of our said late royal father, his heirs and successors, at the receipt of his *Exchequer*, by the hands of the commissioners for his treasury, or the treasurer and chamberlain of our said late royal father, his heirs and successors, there for the time being, at the feast of *St. Michael* the archangel, and of the annunciation of the blessed virgin *Mary*, by equal portions; the first payment thereof to begin from the feast of *St. Michael* the archangel then last past, together with all other rights, fees, profits, advantages and emoluments whatsoever, to the same office due and accustomed, in as ample manner and form as *J. P.* esq; *Somerset*, Sir *T. St. G.* knt. *Somerset*,

F. B.

F. B. esq; *Somerſet*, or the ſaid S. S. *Somerſet*, or any other or others of the heralds of our ſaid late royal father, called *Somerſet*, then lately had and received for the exerciſe of the ſaid office, as by the ſaid letters patent inrolled in our *Chancery* more fully appears: And whereas the ſaid J. W. *Somerſet* at divers times within the ſpace of 13 years laſt paſt was required by the duty of his ſaid office, and ought perſonally to have attended the buſineſs and ſervice thereof; and whereas we are given to underſtand, that the ſaid J. W. *Somerſet* for the time laſt mentioned hath not perſonally attended the buſineſs and ſervice of his ſaid office, but hath abſented himſelf therefrom, and neglected the duty thereof, in contempt of us and to our prejudice; whereby the ſaid J. W. *Somerſet* hath incurred the forfeiture of his ſaid office, and of all his right, title and intereſt therein: Nevertheless we being willing to have further and more certain information of and concerning the truth of the ſaid premiſſes, and that right and juſtice ſhould be done therein, do command you that by good and lawful men of your bailiwick you make known to the ſaid J. W. *Somerſet*, that he be before us in our chancery aforeſaid in one month from the day of St. *Michael* next to come, whereſoever it then ſhall be, to ſhew if he hath or knoweth any thing to ſay why the ſaid letters patent and the inrolment thereof, for the reaſons aforeſaid, ought not to be cancelled, vacated and annulled, and reſtored to us in our chancery, there to be cancelled, and further to do and receive concerning the premiſſes whatſoever the ſaid court ſhall conſider in this behalf; and have you there the names of thoſe by whom you ſhall ſo cauſe it to be ſo made known to him, and ſo writ. Witneſs *John* archbiſhop of C. and other guardians and juſtices of the kingdom at *Weſtmiſter* the 11th day of *October* in the 14th year of our reign.

Assignment of
breach of duty
in non-atten-
dance.

Scire facias.

Verney. Aſheton.

To the ſheriff of *Middleſex*. Scire facias to revoke Label.
letters patent granted to J. W. esq;

Verney. Aſheton.

The within named J. W. *Somerſet*, hath not any thing in my bailiwick, where or by which I can give him notice, as by this writ I am commanded, nor is the ſaid J. W. *Somerſet* found in the ſame.

The answer of

Henry Maſhal, esq; }
and } Sheriff.
Richard Hoare, esq; }

GEORGE

Testatum
Sci' fa'

GEORGE the third, by the grace of God, of Great Britain, France, and Ireland, king, defender of the faith, &c. To the sheriff of Northamptonshire, greeting: Whereas (*ut antea* to) and that right and justice should be done therein, by our writ to our sheriff of the county of Middlesex we lately commanded him, that by (to) and that he should have there the names of those by whom he should so cause it to be made known to him, and our said writ; at which day in our said writ contained, our said sheriff of Middlesex aforesaid, *to wit*, H. M. esq; and R. H. esq; returned to us in our chancery aforesaid, that the said J. W. Somerset, had not any thing in his bailiwick where or by which he could give him notice, as by the said writ he was commanded, nor was the said J. W. Somerset found in the same, as by the return thereof, on the file of our chancery remaining on record, doth more fully appear: Whereupon it is sufficiently testified before us in our chancery aforesaid, that the said J. W. Somerset hath sufficient in your bailiwick where or by which you may make it known to him: Therefore we command you, that by good and lawful men of your bailiwick you make known to the said J. W. Somerset, that he be before us in our chancery aforesaid in eight days of St. Martin next to come, wheresoever we shall then be, to shew if he hath or knows any thing to say why (to) shall consider in this behalf; and have you the names of those by whom you shall so cause it to be made known to him, and this writ. Witness ourself at Westminster the 30th day of October in the 9th year of our reign.

Verney. Frewen.

Sci. fac. for ex-
ecutors to re-
vive a judgment
obtained by
their testator.

GEORGE, &c. To the sheriff of Bucks greeting: Whereas J. D. lately in our court, *to wit*, in the term of St. Hilary, in the 9th year of our reign, before Alexander Denton, esq; Sir John Fortescue Aland, knt. and Thomas Reeve, then our justices of the bench at Westminster, by the consideration of the same court recovered against J. B. late of Chipping Wycombe in your county, inn-holder, otherwise called J. B. late of Chipping-Wycombe in the county of Bucks, inn-holder, as well a certain debt of 59ol. as 50s. which the said J. D. in our same court were adjudged for damages which he had by reason of detaining that debt whereof he is convicted, as by the record and proceedings thereof remaining in our same court manifestly appeareth; yet execution of that judgment still remains to be made, and the said J. D. is dead, as we have been informed by W. C. and T. R. executors of the testame

and last will of the said *J. D.* And because we will that those things which are rightly done in our same court be duly put in execution, we command you, that by honest and lawful men of your bailiwick you give notice to the said *J. B.* that he be before our justices at *Westminster* from the day of the Holy Trinity in three weeks, to shew if he hath or knoweth any thing to say for himself why the said *W.* and *T.* ought not to have execution against him for the debt and damages aforesaid, according to the form of the recovery aforesaid, if to him it shall seem meet: And have you there the names of them by whom you shall give him notice, and this writ. Witness, &c.

It was commanded the sheriff, that whereas *J. D.* Entry thereof lately in the court of the lord the now king before *Alexander Denton*, esq; Sir *John Fortescue Aland*, knt. and *Thomas Reeve*, esq; then justices of him the lord the king of the bench here, *to wit*, at *Westminster*, by the consideration of the same court had recovered against *J. B.* late of *Chipping-Wycombe* in the county of *Bucks*, innholder otherwise called *J. B.* of *Chepping-Wycombe* in the county of *Bucks* innholder, as well a certain debt of 500*l.* as 50*s.* which to the said *J. D.* in the court of our said lord the king were adjudged for his damages which he had by reason of detaining that debt, whereof he is convicted, as by the record and proceedings thereof in the same court of the said lord the now king here, *to wit*, at *Westminster* aforesaid remaining, manifestly appeareth; yet execution of the judgment aforesaid still remaineth to be made, and the said *J. D.* is dead, as the king hath been informed by *W. C.* and *T. B.* executors of the testament and last will of the said *J. D.* and because, &c. that by honest, &c. the said sheriff caused the said *J. B.* to know that he should be here at this day, *to wit*, from the day of the Holy Trinity in three weeks, to shew if any thing, &c. why the aforesaid *W. C.* and *T. B.* ought not to have execution against him for the debt and damages aforesaid, according to the form of the recovery aforesaid; if, &c. And now here this day came the aforesaid *W. C.* and *T. B.* by *T. W.* their attorney, and presented themselves the fourth day against the aforesaid *J. B.* in the plea aforesaid; and he being solemnly required, did not come; and the now sheriff hath returned that he had nothing, &c. nor is to be found, &c. Therefore it is considered, that the aforesaid *W. C.* and *T. B.* have execution against the aforesaid *J. B.* of the debt and damages aforesaid by default, &c.

Trin.

Trin. 10 & 11 Geo. 2. Roll 659.

Scire facias in
case, where one
of the plts
married after
judgment.

GEORGE the second, &c. To the sheriffs of *London* greeting: *Whereas M. B. and G. B. lately to wit, in Hilary term in the 13th year of our reign, before Sir John Willes, knt. and his companions, then our justices of the bench at Westminster, by the consideration of that court recovered against J. B. late of, &c. 75l. for their damages which they had on occasion of the not performing certain promises and undertakings to the said M. and G. then lately made by the said J. at L. whereof he is convicted, as by the record and proceedings thereof remaining in our said court of the bench is manifestly apparent: And whereas the said M. after the recovery of the damages aforesaid, to wit, on the 1st day of March in the year of our Lord 1739. at London aforesaid, took to her husband one P. S. And altho' judgment is rendered in form aforesaid, yet execution of the said judgment still resteth to be made to them the said P. M. and G. as we have received information from the said P. M. and G. and because we are willing that such things as are rightly done in our said court should meet with a due execution; we command you that by honest and lawful men of your bailiwick, you cause it to be made known to the said J. that he be before our justices at W. in eight days of the Holy Trinity, to shew if he hath or knoweth any thing to say for himself why the said P. M. and G. ought not to have execution against him for the damages aforesaid according to the form and effect of the said recovery, if it shall seem expedient to him; and have you there the names of them by whom you shall cause it to be made known to him, and this writ. Witness Sir John Willes, knt. at Westminster, the 19th day of May in the 13th year of our reign.*

Borret.

Entry of a Scire
facias in debt by
a surviving plt.

Devonshire, **T**HE sheriff was commanded, that *to wit,* whereas *E. P. clerk, and R. F. the younger, gentlemen, lately, that is to say, in the term of the Holy Trinity in the tenth year of his present majesty's reign, in his said majesty's court of the bench here, by the consideration of the same court had recovered against*

R. C.

R. C. late of, &c. clerk, as well a certain debt of 250*l.* as also 50*s.* which in the same court were adjudged to the said E. P. and R. F. for their damages, which they had sustained by reason of the detaining the said debt, whereof he is convicted, as by the record and process thereof remaining in the same court manifestly appeareth: And whereas the said E. afterwards died, and the said R. F. survived him; nevertheless execution of the said judgment yet remaineth to be made, as the king hath been informed by the said R. F. and because, &c. that by honest, &c. he should make known to the said R. C. that he should be here at this day, *to wit*, on the morrow of the ascension of our Lord, to shew if any thing, &c. why the said R. F. ought not to have execution against him for the debt and damages aforesaid, according to the form of the said recovery, if, &c. And now at this day the said R. F. cometh here in his proper person, and offereth himself the fourth day against the said R. C. in the plea aforesaid; and he, though solemnly called, cometh not: and the sheriff now returneth, that he hath nothing, &c. nor is to be found, &c. therefore it is considered, that the said R. F. have execution against the said R. C. for the debt and damages aforesaid, by default, &c.

Return Nihil.

GEORGE the third, &c. To the sheriff of *Mid-*
dlesex, greeting. Whereas W. N. late of, &c. and W.
W. late of, &c. lately, that is to say, in the term of
Easter in the 17th year of our reign, in our court of
common pleas, before Sir William De Grey, knight, and
his companions, our justices of our court of common
pleas at *Westminster*, acknowledged, and each of them
did acknowledge to owe to J. M. the sum of 80*l.* which
said sum of 80*l.* they the said W. N. and W. W. for
themselves and their heirs willed and granted, and each
of them for himself and his heirs did will and grant, to
be made of the lands and chattels of each of them, and
to be levied to the use and behoof of the said J. And
whereas also A. A. late of, &c. otherwise called, &c. the
same term before the same justices in our said court ac-
knowledged himself to owe to the said J. the sum of
160*l.* which said sum of 160*l.* the said A. for himself and
his heirs, willed and granted to be made of his lands and
chattels, and to be levied to the use and behoof of the said
J. under this condition, that if judgment should happen
to be given in our said court for the said J. against the said
A. in

Scire facias on
a recognizance
of bail in debt.

A. in a certain plea of debt upon demand 200*l.* by the said *J.* against the said *A.* in our said court brought, then the said *A.* should satisfy as well the said debt of 200*l.* as also all the damages which to the said *J.* against the said *A.* in our said court by occasion of detaining the said debt should be adjudged, or render his body on that occasion to our prison of the *Fleet*; and altho' the said *J.* in the term of the Holy Trinity in the 18th year of our reign, before the aforesaid Sir *William De Grey*, knight, and his companions, our justices of our said court of common pleas at *Westminster*, by the consideration of the same court recovered against the said *A.* as well the said debt of 200*l.* as also 15*l.* which to the said *J.* against the said *A.* in our same court were awarded for his damages which he had by occasion of detaining the said debt whereof he is convicted, as the record and proceedings thereof in our said court now remaining manifestly appeareth: Nevertheless the said *A.* hath not satisfied the said *J.* for the debt and damages aforesaid, nor rendered his body to our said prison upon the occasion aforesaid, according to the form of the said recognizance, as we have given to understand by the information of the said *J.* And because we are willing that those things which are rightly done and acknowledged in our said court, should be brought to a due execution, we command you, that by honest and lawful men of your bailiwick you make known to the said *W. N.* and *W. W.* and *A. A.* that they be before our justices at *Westminster* on the morrow of *All Souls*, to shew if they know of or have any thing to say for themselves, that is to say, the said *W. N.* why the said 80*l.* by him in form aforesaid acknowledged should not be made upon his lands and chattels, the said *W. W.* why the said 80*l.* by him in form aforesaid acknowledged should not be made upon his lands and chattels, and the said *A. A.* why the said 160*l.* by him in form aforesaid acknowledged, should not be made of his lands and chattels, to the use and behoof of the said *J.* to be levied according to the form of the said recognizance, if to them it shall seem expedient: And have you there the names of those by whom you shall give such notice, and this writ. Witness Sir *William De Grey*, knt. at *Westminster*, the 6th day of *November* in the 19th year of our reign.

Easter

Easter 6 Ann. Ro. 336.

London, *IT* was commanded to the mayor, aldermen
to wit, and sheriffs of *London*, that immediately
 after the receipt of this writ they should have the body
 of *I. S.* detained as it was said in the prison of the lady
 the queen under their custody, by whatsoever name the said
I. should be called in the same, together with the day and
 cause of the taking and detaining of the said *I.* before Sir
Thomas Trevor, knt. chief justice of the said lady the
 queen of the bench, at his chamber in the *Inner Temple*,
London, to do and receive all and singular those things which
 the said chief justice should then and there consider of him
 in that behalf: And that they should have there that writ,
 &c. *Afterwards*, to wit, on the 19th day of *February* in the
 year of our Lord 1706, the said *I.* came in his proper
 person, under the custody of the said sheriffs, by virtue
 of the said writ, and the said sheriffs, namely Sir *A. C.*
 knt. and Sir *W. B.* knt. now return that the execution
 of the said writ appeareth in a certain schedule annex-
 ed to that writ, the tenor of which said schedule fol-
 loweth in these words: We Sir *A. C.* knt. and Sir *W.*
B. knt. sheriffs of the city of *London* aforesaid, certify to
 Sir *Thomas Trevor*, knt. chief justice of the lady the
 queen of the bench, &c. named in the writ annexed to
 this schedule, that before the coming of the said writ to
 us, *to wit*, on the 28th day of *January* in the 5th year of
 the reign of our lady *Anne*, by the grace of God, of
England, Scotland, France, and Ireland, queen, defender of
 the faith, &c. *I. S.* named in the said writ, was taken at
London aforesaid, and detained in the prison of the said
 lady the queen under our custody, by virtue of a certain
 plaint levied in the court of the said lady the queen held
 on the day and year aforesaid, before me the said Sir *A. C.*
 knt. one of the sheriffs of the city aforesaid, against the said
I. by the name of, &c. at the suit of *E. S.* in a plea of
 debt upon demand of 40*l.* whereupon the said parties
 have pleaded to an issue of the country, and so it de-
 pendeth undetermined; and this is the cause of the tak-
 ing and detaining of the said *I. S.* whose body we have
 ready. *Afterwards*, to wit, on the said 19th day of *Fe-*
bruary in the year of our Lord 1706, aforesaid, before
Robert Tracey, esq; one of the justices of the court here,
 at his chamber situate in *Serjeants Inn* in *Fleet-street*, came
 the said *I.* and *E. W.* of *Staple's Inn*, *London*, gent. and
M. J. of *Fetter-Lane*, *London*, gent. in their proper per-
 son,

Entry of a re-
 cognizance of
 bail on a Habeas
 corpus cum
 causa.
 The Habeas
 Corpus.

The return.

Recognizance.

son, and undertook, and each of them undertook, *to wit*, the said *I.* in the sum of 80*l.* and the said *E.* and *M.* for themselves separately in the sum of 40*l.* that the said *I.* should appear here in his proper person, or by his attorney sufficient in the law, to the action or writ of the said *E.* of and upon the cause aforesaid, before the end of two terms then next following, to be sued out and prosecuted in the same term here, and to answer to the said *E.* in the plea aforesaid; and also if it should happen that judgment after the appearance of the said *I.* made in the court here should be given for the said *E.* to satisfy the said *E.* of the debt to be recovered or adjudged against the said *I.* in the plea aforesaid, or that he the said *I.* should render himself on that occasion to the prison of the said lady the queen of the *Fleet*, which said sum of 80*l.* acknowledged by the said *I.* in form aforesaid, the said *I.* acknowledged to be made of his lands and chattels; and which said sum of 40*l.* separately acknowledged by the said *E.* and *M.* in form aforesaid, the said *E.* and *M.* and each of them separately acknowledged to be made of their lands and chattels, and to be levied to the use and behoof of the said *E.* in form aforesaid, if it should happen that the said *I.* should make default in any of the premisses, and be convicted thereof in lawful manner: *Which* said recognizance the said justice afterwards, *to wit*, on the 30th day of *April* in this same term, by his own proper hands delivered here into court to be inrolled of record, &c.

Scire facias on a
recognizance of
bail upon a Ha-
beas Corpus
cum causa.

A N N E, &c. To the sheriff of *Middlesex* greeting.
Whereas *I. S. E. W.* of *London*, gent. and *M. J.* of *London*, gent. on the 19th day of *February* in the year of our Lord 1706. before *Robert Tracey*, esq; one of the justices of our court of the bench, at his chambers situate in *Serjeants Inn* in *Fleet-street*, *London*, in their proper persons undertook, and each of them undertook, *to wit*, the said *I.* in the sum of 80*l.* and the said *E.* and *M.* for themselves separately in the sum of 40*l.* that the said *I.* should appear in our court before our justices at *Westminster* in his proper person, or by his attorney sufficient in the law, to the action or writ of one *E. S.* against him the said *J.* of a plea of debt upon demand 40*l.* to be sued out and prosecuted in our same court before the end of two terms then next following, and to answer to the said *E.* in the plea aforesaid; and also if it should happen that judgment after the appearance of the said *I.* made in the same court should be given for the said *E.* then to satisfy the said *E.* of the debt and damages to be

be recovered or adjudged against the said *I.* in the plea aforesaid, or that he the said *I.* should render himself on that occasion to our prison of the *Fleet*, which said sum of 80*l.* acknowledged by the said *I.* in form aforesaid, the said *I.* acknowledged to be made of his lands and chattels, and which said sum of 40*l.* separately acknowledged by the said *E.* and *M.* in form aforesaid the said *E.* and *M.* and each of them separately acknowledged to be made of their lands and chattels, and to be levied to the use and behoof of the said *E.* if it should happen that the said *I.* should make default in any of the premisses, and be thereof lawfully convicted: Which said recognizance the same justice afterwards, *to wit*, on the 30th day of *April* in the sixth year of our reign, by his own proper hand delivered into the said court, to be inrolled of record, and it is inrolled there, as by the record thereof remaining in our same court manifestly appeareth of record; And altho' the said *E.* before the end of two terms next after the said time of the said recognizance made in form aforesaid, *to wit*, on the 23d day of *May* in the 6th year of our reign, sued out our certain original writ of and upon the said plea, out of our court of chancery, the same court being at *Westminster* in our county of *Middlesex*, against the said *I.* returnable and returned in our court before our justices at *Westminster* on the morrow of the Holy *Trinity* then next following; to which said original writ sued out and prosecuted by the said *E.* in form aforesaid, the said *I.* by *J. C.* then his attorney, appeared in our same court before our justices at *Westminster*, according to the form of the said recognizance, and in the same plea in our said court pleaded to issue; and in such manner it was proceeded thereupon in our same court before our justices at *Westminster*, that afterwards, *to wit*, in the term of the Holy *Trinity* in the 6th year of our reign, before Sir *Thomas Trevor*, knt. and his companions, our justices of the bench aforesaid, the said *E.* by the consideration of the same court recovered against the said *I.* as well the said debt of 40*l.* as ———, which then were adjudged to the said *E.* in our same court for her damages which she then had by occasion of the detaining that debt, whereof he is convicted, as manifestly appeareth by the record and process therein remaining in our court before our justices at *Westminster*: Nevertheless the said *I.* hath not yet satisfied the said *E.* of the debt and damages aforesaid recovered in form aforesaid, nor hath he yet rendered his body in execution of the said judgment to our prison of the *Fleet*, according to the form and effect of the said recognizance, as we have been informed by the said *E.* And because

Recognizance
inrolled.

Breach.

we would that those things, which in our said court are rightly acted, should be demanded by a due execution; *We command* you, that by good and lawful men of your bailiwick you make known to the said *I. E.* and *M.* that they be before our justices at *Westminster* on the octave of *St. Hilary*, to shew if any thing they have or know to say for themselves, *to wit*, the said *I.* why the said *Sol.* by him in form aforesaid acknowledged, of his lands and chattels, and the said *E.* why the said *40l.* acknowledged by him in form aforesaid, of his lands and chattels, and also the said *M.* why the said *40l.* also acknowledged by him in form aforesaid, of his lands and chattels, ought not to be made and levied to the use and behoof of the said *E.* according to the form of the said recognizance, if it shall seem expedient to them, and have there the names of them by whom you shall make known to them, and this writ. Witness, &c.

Scire facias by administrator against bail, after judgment affirmed in error.

GEORGE III. by the grace of God, of *Great Britain, France, and Ireland*, king, defender of the faith, &c. To the sheriff of *Middlesex* greeting. Whereas *J. S.* late of *Forster Lane, London*, painter-stainer, and *W. W.* the younger, late of the *Bank Side Southwark*, iron-founder, lately, that is to say, in the term of *St. Hilary* in the 3d year of our reign, in our court of common pleas, before Sir *R. E.* knt. and his companions, then our justices of our said court of common pleas at *Westminster*, acknowledged, and each of them did acknowledge to owe to *G. S.* the younger, by the name of *G. S.* the sum of 200*l.* which said sum of 200*l.* they the said *J. S.* and *W. W.* for themselves and their heirs willed, and granted, and each of them for himself and his heirs did will and grant to be made of the lands and chattels of each of them, and to be levied to the use and behoof of the said *G. S.* upon this condition, That if judgment should happen to be given in our said court for the said *G. S.* against *K. E.* late of *Westminster* in your county, esq; in a plea of trespass upon the case upon promise, to the damage of the said *G.* of 120*l.* by the said *G. S.* against the said *K.* in our said court brought, then the said *K.* should satisfy the said *G. S.* all the damages which to the said *G. S.* in our said court in the said plea of trespass upon the case should be adjudged, or should render his body on that occasion to our prison of the *Fleet*. And although the said *G. S.* in the same term before the aforesaid Sir *R. E.* knt. and his companions, then our justices

justices of our said court of common pleas at *Westminster*, by the consideration of our said court recovered against the said *K.* 115l. 10s. which to the said *G.* in our said court were adjudged for his damages which he sustained on occasion of the said trespass on the case aforesaid, and whereof he is convicted, as by the record and proceedings thereupon, which in our court before us by virtue of our writ to correct errors brought by the said *K.* of and concerning the premisses, we lately caused to be brought in our court before us, and which in our court before us now remaining in all things affirmed may manifestly appear. And whereas the said *G.* afterwards, *to wit*, the 16th day of *March* in the year of our Lord 1730, at *Westminster* aforesaid, died intestate, and after whose death administration of all and singular the goods and chattels, rights and credits which were the said *G.*'s at the time of his death, by *W.* by divine Providence archbishop of *Canterbury*, primate of all *England* and metropolitan, on the 6th day of *April* in the year of our Lord 1731. at *London* in due form of law was committed to *G. S.* father of the said *G. S.* the younger; as on the information of the said *G. S.* the father, we have been given to understand. And whereupon in our said court before us it was lately considered, That the aforesaid *G. S.* the father might have his execution against the said *K.* for the damages aforesaid; yet the said *K.* hath not satisfied the said *G. S.* the younger, in his life time, nor the said *G.* the father, since the death of the said *G.* the younger, the damages aforesaid; neither hath the said *K.* surrendered his body on that occasion to the prison of the *Fleet*, as on the information of the said *G. S.* the father, we are given to understand. And because we are willing that those things which in like manner are required, and in our said court are rightly done, should be brought to a due execution, We command you, that by honest and lawful men of your bailiwick you make known to the said *J. S.* and *W. W.* that they may be before our justices at *Westminster* on the morrow of the ascension of our Lord, to shew if any thing they know of or have to say for themselves, that is to say, the said *J. S.* why the said 200l. by him in form aforesaid acknowledged, should not be made upon his land and chattels, and the said *W. W.* the younger, why the said 200l. by him in form aforesaid acknowledged, should not be made upon his lands and chattels and be levied according to the form of the said recognizance, if to them

it seems expedient. And have you there the names of them by whom to them you give such notice, and this writ. Witness.

Scire facias
against bail.

GEORGE III. by the grace of God, king of Great Britain, France, and Ireland, defender of the faith, &c. To the sheriff of *Middlesex* greeting. Whereas *F. S.* late of, &c. *F. F.* late of, &c. and *T. P.* late of, &c. lately in our court, *to wit*, in the term of the Holy Trinity in the year of our reign, before Sir *R. E.* knt. and his companions our justices of the bench at *Westminster*, acknowledged, and each of them did acknowledge to owe to *E. P.* and *W. F.* the sum of 38l. which said sum of 38l. they the said *T. S. F.* and *T. P.* for themselves and their heirs, willed and granted, and each of them for himself and his heirs did will and grant to be made of their and of each of their lands and chattels, and to be levied to the use and behoof of the said *E.* and *W.* upon this condition, that if judgment should happen to be given in our said court for the aforesaid *E.* and *W.* against *T. T.* late of, &c. in a certain plea of trespass on the case to the damage of the said *E.* and *W.* of 30l. prosecuted by the said *E.* and *W.* against the said *T. T.* in our said court; Then the said *T. T.* should satisfy all damages which should be adjudged to the said *E.* and *W.* in our said court, against the said *T. T.* in the plea aforesaid, or should render his body on that occasion to the prison of the *Fleet*. And although the said *E.* and *W.* in the term of in the year of our reign, before the said Sir *R. E.* knt. and his companions, our justices of the bench at *Westminster* aforesaid, by the consideration of the said court recovered against the said *T. T.* 30l. which were adjudged to the said *E.* and *W.* in our said court, for their damages which they had by occasion of the said trespass on the case whereof he is convicted, as by the said record and proceedings therein in our said court remaining, plainly appeareth; yet the said *T. T.* has not satisfied the said damages to the said *E.* and *W.* nor rendered his body, on the occasion aforesaid, to the prison of the *Fleet*, according to the form of the said recognizance, as from the information of the said *E.* and *W.* we are given to understand. And because we will that those things which in our said court are rightly acted and acknowledged be duly executed, We command you that by good and lawful men of your bailiwick you make known to the said *F. S. F.* and *T. P.* that they be before our justices at *Westminster* on the

morrow

The whole damages and costs
as taxed.

morrow of the purification of the blessed virgin Mary, to shew if any thing they have for themselves; or know to say, *to wit*, the said J. S. wherefore the said 38l. by him in form aforesaid acknowledged, ought not to be made of his land and chattels: the said F. wherefore the said 38l. by him in form aforesaid acknowledged, ought not to be made of his lands and chattels, and the said T. P. why the said 38l. by him in form aforesaid ought not to be made of his lands and chattels, and levied to the use and behoof of the said E. and W. according to the form of the said recognizance, if to them it shall seem expedient; and have you there the names of them by whom you shall make it known unto them, and this writ. Witness Sir William De Grey, knt. the 23d of January in the . year of our reign,

De Grey.

Trespass.

Trespass.

Declaration in
trespass for
breaking the
plaintiff's
house, assaulting
and lying with
his wife.

Middlesex, *M.* B. late of, &c. was attached to answer
to wit, *J. S.* of a plea, wherefore he broke
and entered the house of the said *J. S.* at the parish of
St. James Westminster in the county of *M.* aforesaid, and
then and there with force and arms, made an assault on
E. the wife of the said *J.* and then and there beat,
wounded and ill-treated, carnally knew and committed
adultery with the said *E.* and did other injuries to him,
to the great damage of the said *J.* and against the peace
of our lord the present king, &c. And whereupon the
said *J.* by *A. B.* his attorney complaineth that the said
M. on the 6th day of *October* in the seventeenth year of
the reign of our sovereign lord *George III.* now king of
Great Britain, &c. and at divers other days and times
between the said 6th day of *October* and the second day
of *March* then next following, at the parish of St. James
Westminster in the county of *M.* aforesaid, with force and
arms broke and entered the house of the said *J.* and
with force and arms made an assault on *E.* the wife of
the said *J.* and then and there beat, wounded, ill-treated
and committed adultery with the said *E.* whereby the
said *J.* for the whole time aforesaid there intirely lost the
comfort, love and affection of the said *E.* his wife, and
then and there did other injuries to the said *J.* to the
great damage of the said *J.* and against the peace of our
said lord the king: Wherefore the said *J.* saith, that he
is injured, and hath damage to the value of 1000*l.* and
thereof he bringeth suit, &c.

Trin. 17 Geo. 3.

Memorandum
of a declara-
tion against an
attorney.

Dorsetshire, *BE* it remembered, that on the 20th day of
April in *Easter* term in the 16th year of
the reign of our lord the king that now is, *R. W.* Dr. of
physic, came here by *J. S.* his attorney, and exhibited
to the justices of our lord the king of the bench here,
his bill against *W. B.* gent. one of the attornies of the
court

court of our said lord the king of the bench here, present here in court in his proper person, the tenor of which said bill followeth in these words, *to wit*, To the justices of the lord the king of the bench, *Dorsetshire*, *R. W.* Dr. of physick, by *J. S.* his attorney complaineth of *W. B.* gent. one of the attornies of the court of the lord the king of the bench, present here in court in his proper person, *for that* the said *W.* on the 1st day of *May* in the year of our Lord 1777, and at diverse other days and times between that day and the 1st day of *May* in the year of our Lord 1778, with force and arms made an assault upon *M.* the wife of the said *R. W.* at *S.* in the said county, and her the said *M.* then and there ravished, embraced and carnally knew, whereby the said *R.* lost and was deprived of the comfort and society of his said wife, and other injuries did to him, to the great damage of the said *R. W.* and against the peace of our lord the present king, &c. Wherefore the said *R.* saith that he is injured, and hath sustained damage to the value of 1000*l.* and thereupon he prayeth remedy, &c. Pledges for prosecuting, *to wit*, *J. D.* and *B. R.*

Bill against an attorney of C. B. in a plea of trespass and assault for criminal conversation with the plaintiff's wife.

And the said *W. B.* in his proper person cometh and defendeth the force and injury when, &c. and prayeth leave to imparle thereto here, until *Friday* next after the morrow of the Holy *Trinity*; and he hath it, &c. The same day is given to the said *R. W.* here, &c. At which day cometh here as well the said *R. W.* by his said attorney, as the said *W. B.* in his proper person. And the said *R. W.* requireth that the said *W. B.* may answer his said bill, &c. And the said *W. B.* in his proper person defendeth the force and injury when, &c. And saith that he is in nothing guilty of the premisses above laid to his charge, as the said *R. W.* above complaineth against him; and of this he putteth himself upon the country; And the said *R. W.* likewise. Therefore the sheriff is commanded, that he cause to come here on *Wednesday* next after three weeks of the Holy *Trinity*, twelve, &c. By whom, &c. Who neither, &c. To recognize, &c. Because as well, &c.

Pledges.

Impar lance.

Plea, Not guilty.

Issue.

Venire awarded.

Middlesex, to wit, *G. F.* late of, &c. was attached to answer unto *M. B.* spinster, in a plea, why he the said *G.* with force and arms the house of the said *M.* at the parish of ——— in the county aforesaid, did break and enter, and there without the leave, and against the will of the said *M.* a long time continued, and the goods and chattels of the said *M.* there lately found to the value

Declaration in trespass, for breaking plaintiff's house, tarrying there and carrying away her goods.

value of 10l. did take, seise, carry away, and to his own proper use convert and dispose, and other wrongs to the said *M.* did, to the great damage of the said *M.* and against the peace of our lord the now king, &c. And whereupon the said *M.* by *W. W.* her attorney complaineth, That the said *G.* with force and arms, &c. on the day of _____ in the _____ year of the reign of *George II.* king of *Great Britain*, &c. the house of the said *M.* at the parish aforesaid in the county aforesaid, did break and enter, and there without the leave and against the will of the said *M.* continued a long time (*to wit*) for the space of 24 hours, and the goods and chattels, *to wit*, one feather bed, &c. of the said *M.* there lately found, to the value of the aforesaid 10l. did take, seise, carry away, and to his own proper use convert and dispose; and other wrongs, &c. to the great damage, &c. and against the peace, &c. Whereupon the said *M.* saith that she is injured, and hath damage to the value of 10l. and thereof she bringeth suit, &c.

Declaration in
trespass for
breaking plain-
tiff's close,
treading down
the grass, &c.
laid specially.
C. B.

Oxfordshire, to wit, *M. F.* late of, &c. was attached to answer to *S. S.* of a plea, wherefore he the said *M.* with force and arms the close of the said *S.* in the parish of *Waterperry* in the said county of *O.* broke and entered, and the grass late growing there to the value of 5l. trod down and consumed with his feet and the feet of his servants, by his and their walking thereon, and other grass late growing there of the said *S.* to the value of 5l. trod down and consumed with horses, oxen, cows and hogs, and other grass of the said *S.* late growing there, to the value of 5l. with carts and carriages trod down and consumed, and the earth and soil thereof tore up and plowed, and six cart-loads of flooded grass laid down, unloaded and placed in the said close of the said *S.* and permitted the said flooded grass to continue there for a long time, and also another close of the said *S.* in the parish aforesaid broke and entered, and the grass there late growing to the value of 10l. with his feet and the feet of his servants, by his and their walking thereon, and with horses and dogs, by hunting in the said close, trod down and consumed; and the hedges, fences, gates and ditches of the said *S.* late being there, to the value of 10l. broke down, destroyed, laid to the ground and filled up; and did him other wrongs to the great damage of the said *S.* and against the peace of our sovereign lord the king. And whereupon the said *S.* by *E. R.* his attorney complaineth, That the said *M.* on the 20th day of

July

July in the year of our Lord 1776, at the parish of *W.* in the said county of *O.* with force and arms broke and entered a close of the said *S.* containing ten acres, called *Hoghill*, in the said parish of *W.* and the grafs of the said *S.* late growing there, to the value, &c. trod down and consumed with his feet and the feet of his servants, by his and their walking thereon, and fed on, trod down and consumed the said grafs with horses, oxen, cows and hogs, and other grafs of the said *S.* late growing there, to the value, &c. with carts and carriages trod down and consumed, and the earth and soil thereof then and there tore and plowed up with the said carts and carriages, and six cart-loads of flooded grafs then and there laid down, unloaded and placed, and permitted the same grafs so laid down and placed, to continue in the said close for the space of one month from thence following, and also continuing the said trespasss as to the said treading down, consuming and feeding on the grafs, and also tearing and plowing up the earth and soil of the said close, at diverse days and times from the said 20th day of *July* in the year aforesaid to the 20th day of *October* following; and also that he the said *M.* on the 1st day of *April* in the year of our Lord 1773, at the parish of *W.* aforesaid, broke and entered another close of the said *S.* there being, called the *Ewe ground*, and the grafs of the said *S.* then late growing there, to the value, &c. trod down and consumed with his feet and the feet of his servants, by his and their walking thereon, and also with horses and dogs, by their running thereon, in his the said *M.* and his servants then and there hunting with the said horses and dogs in the said last mentioned close, and then and there broke down and destroyed by the said hunting of the said *M.* and his servants, with the said horses and dogs, the hedges, fences, gates and ditches of the said *S.* then and there, *to wit*, 20 perches of hedges and 20 perches of fences, and 20 perches of ditches, and five gates then and there being, of the value, &c. then and there broke, destroyed, laid to the ground, and filled up, continuing the said last mentioned trespasss at divers days and times from the said 1st day of *April* in the said year of our Lord 1773, to the day of the issuing forth of the original writ of the said *S.* and then and there did him other wrongs, &c. to the great damage, &c. against the peace, &c. whereupon the said *S.* declareth he is injured and damaged to the value of 30*l.* and thereof he bringeth suit, &c.

Continuando.

Continuando.

And

Plea as to part
Not guilty.

Issue.

As to the residue, that the locus in quo, &c. was parcel of common meadow, that E. R. long before, &c. was seised in fee of the locus in quo, &c. and of another parcel of ground in the same meadow, to which he had no way but over the locus in quo, &c. that E. R. demised the said other parcel of ground to the deft. who therefore justifies in using his way to the same, doing as little damage as he could.

And the said M. by H. H. his attorney cometh and defendeth the force and injury when, &c. And as to the coming with force and arms, and whatever is against the peace of his said majesty, and all the said trespass above supposed to be done, except the breaking and entering of the said close called *Hoghill*, in which, &c. and the treading down and consuming of the grass aforesaid there growing with his feet and the feet of his servants, by walking thereon, and the feeding on, treading down and consuming the grass aforesaid there growing with the said horses, and the treading down and consuming other the grass there growing with the said carts and carriages, and the tearing and plowing up with the said carts and carriages the earth and soil aforesaid there, saith that he is not guilty thereof as the said S. hath above complained against him; and thereupon he putteth himself upon the country; and the said S. doth so likewise: And as to the breaking and entering the said close called *Hoghill*, in which, &c. and the treading down and consuming of the grass aforesaid there growing with his feet and with the feet of his servants, by walking thereon, and the feeding on, treading down, and consuming the grass aforesaid there growing with the said horses, and the treading and consuming other the grass aforesaid there growing with the said carts and carriages, and the tearing and plowing up with the said carts and carriages the earth and soil aforesaid there, the said M. saith that the said S. ought not therefore to have his said action against him, because he saith, that the said close called *Hoghill*, in which the said trespass is above supposed to be done, at the said time when, &c. was and is a piece of meadow containing 10 acres, parcel of a certain common meadow called *Hoghill* in the parish of W. aforesaid. And the said M. further saith, that long before the said time when, &c. E. R. esq; was seised in his demesne as of fee as well of the said close in which, &c. parcel, &c. as of another parcel of the said common meadow containing by estimation two acres, with the appurtenances, at one and the same time; and being so seised thereof, the said E. had not any way to the said parcel of the said meadow containing two acres, except from W. aforesaid in the county of B. through and over the said close in which, &c. parcel, &c. into the said parcel of the said meadow containing by estimation two acres, and back again from that parcel of the said meadow into, through and over the said close in which, &c. to W. aforesaid, for the use and enjoyment of the said parcel of the said meadow containing by estimation two acres; and the said E. being

ing so seised of the said parcel of the said meadow containing by estimation two acres, with the appurtenances, as aforesaid, he the said *E.* nor then having any way to the said parcel of the said meadow containing two acres except from *W.* aforesaid in the said county of *B.* through and over the said close, in which, &c. parcel, &c. into the parcel of the said meadow containing by estimation two acres, and back again from that parcel of the said meadow into, through and over the said close in which, &c. to *W.* aforesaid, for the use and enjoyment of the said parcel of the said meadow containing by estimation two acres, before the said time when, &c. *to wit*, on the 26th day of *March* in the year of our Lord 1736, aforesaid, at the parish aforesaid, demised to the said *M.* the said parcel of the said common meadow containing by estimation two acres, with the appurtenances; To have and to hold to the said *M.* from thence at the will of the said *E.* and *M.* by virtue of which said demise the said *M.* entered into the said parcel of the said meadow so demised to him as aforesaid, with the appurtenances, and has been from thenceforth hitherto possessed thereof, and being so possessed, he the said *M.* of necessity had and ought to have a way from *W.* aforesaid into, through and over the said close in which, &c. parcel, &c. into his said parcel of his said meadow, and back again from his said parcel of his said meadow into, through and over the said close in which, &c. parcel, &c. to *W.* aforesaid, for the necessary use and enjoyment of the said parcel of the said common meadow; and therefore he the said *M.* at the said several times when, &c. went with his said carts and carriages in the said declaration mentioned, drawn by his said horses therein also mentioned, in the said way from *W.* aforesaid into, through and over the said close in which, &c. parcel, &c. into his said parcel of the said meadow, and back again from his said parcel of the said meadow into, through and over the said close in which, &c. parcel, &c. for the fetching, taking and carrying of the hay and grafs of the said *M.* growing, arising and made in his said parcel of the said common meadow, with his said horses, carts and carriages, by himself and his said servants in the said way, as it was lawful for him; and in so doing he the said *M.* and his said servants necessarily trod down and consumed with their feet in walking in the said way a little of the grafs aforesaid, then growing in the said close in which, &c. parcel, &c. and the said horses of the said *M.* in their passing in the said way through the said close in which, &c.

&c. parcel, &c. for the cause aforefaid, againft the will of the faid *M.* did fnatch and eat, and neceffarily trod down and confumed a little of the grafs aforefaid there growing, doing as little damage as might be; and the faid *M.* did neceffarily in uſing his faid way tread down and confume on that occaſion a little other grafs there growing with the faid carts and carriages, and tore and plowed up with his faid carts and carriages on that occaſion the earth and foil aforefaid there, doing as little damage there on that occaſion as he could; *which* are the breaking and entering of the faid cloſe called *Hoghill* in which, &c. and the treading down and confuming of the grafs aforefaid there growing with his feet and the feet of his ſervants, by walking thereon, and the feeding on, treading down and confuming the grafs aforefaid there growing with the faid horſes, and the treading down and confuming other the grafs aforefaid there growing with the faid carts and carriages, and the tearing and plowing up with the faid carts and carriages the earth and foil aforefaid there, of which the faid *S.* hath above complained againft him; *and* this he is ready to verify: *Wherefore* he prayeth judgment if the faid *S.* ought therefore to have his faid action againft him, &c.

Replication de
iniuria ſua pro-
pria.

And the faid *S.* as to the faid breaking and entering of the faid cloſe called *Hoghill*, in which, &c. and the treading down and confuming of the grafs aforefaid there growing, with his feet and the feet of his ſervants by walking thereon, and the feeding on, treading down and confuming the grafs aforefaid there growing with the faid horſes, and the treading down and confuming other the grafs aforefaid there growing with the faid carts and carriages, and the tearing and plowing up with the faid carts and carriages the earth and foil aforefaid there, *replieth*, that he ought not to be precluded from having his faid action to be maintained againft the faid *M.* for the ſame, by any thing above pleaded by him thereto, *becauſe* he the faid *S.* ſaith, that the faid *M.* at the faid time in which, &c. at the pariſh of *W.* aforefaid, broke and entered the faid cloſe called *Hoghill*, in which, &c. and the faid grafs of the faid *S.* late growing there, trod down and confumed with his feet and the feet of his ſervants, by his and their walking thereon, and fed on, trod down and confumed the faid grafs with the faid horſes, and the faid other grafs of the faid *S.* late growing there, with carts and carriages trod down and confumed, and the earth and foil thereof then and there tore and plowed up with the faid carts and carriages, of his own wrong, without

without such cause by him the said *M.* above in his said plea alledged; and this the said *S.* prayeth may be inquired of by the country; and the said *M.* doth so likewise: Therefore the sheriff is commanded, that he cause to come here from the day of the holy *Trinity* in three weeks, 12, &c. and who neither, &c. to recognize, &c. because as well, &c.

Issue.
Venire awarded.

Cumberland, F. *F.* late of, &c. was attached to answer to *to wit,* *W. H.* in a plea wherefore he with force and arms entered into the free chase of the said *W.* at *M.* in the county aforesaid, and without his licence and consent in the same did hunt, and did take, kill and carry away hares, conies, pheasants and partridges; and also wherefore he with force and arms entered into the free warren of the said *W.* at *M.* aforesaid, and without his licence and consent there did hunt and take, kill and carry away other hares, conies, pheasants and partridges, and other injuries to him did, to the great damage of the said *W.* and against the peace of our lord the king; and whereupon the said *W.* by *T. B.* his attorney complaineth, that the aforesaid *F.* on the ——— day of ——— in the ——— year of the reign of his present majesty, and on divers other days and times between that day and the 1st day of *March* in the ——— year of the reign of his said majesty, with force and arms, &c. entered into the free chase of the said *W.* at *M.* aforesaid, and without his licence and consent did in the same hunt, and did take, kill and carry away hares, *to wit,* 20 hares, conies, *to wit,* 40 conies, pheasants, *to wit,* 20 pheasants, and partridges, *to wit,* 20 partridges; and also that the said *F.* on the said several days and times aforesaid, with force and arms, &c. entered into the free warren of the said *W.* at *M.* aforesaid, and without his licence and consent there did hunt, and did take, kill and carry away other hares, *to wit,* 20 other hares, conies, *to wit,* 40 other conies, pheasants, *to wit,* 20 other pheasants, partridges, *to wit,* 20 other partridges; and other injuries, &c. to the great damage, &c. and against the peace, &c. whereupon the said *W.* saith, that he is prejudiced, and hath received damage to the value of 20*l.* and thereof he bringeth suit, &c.

Declaration in trespass for entering plt's free chase and free warren, hunting and killing game, &c.

Oxfordshire, } *T. H.* late of, &c. was attached to answer *to wit,* } *T. B.* of a plea, wherefore with force and arms he the trees of the said *T. B.* at *C.* aforesaid growing to the value of 30*l.* felled and cut down, said growing to the value of 30*l.* felled and cut down, and

Declaration in trespass for cutting down plt's trees, carrying away the timber, &c.

and the timber and wood therefrom coming and arising took, carried away and converted to his own proper use, and the underwood and bushes of him the said *T. B.* at *C.* aforesaid growing, of the value of other 30*l.* cut down and carried away, and other enormities to him did, to the great damage of the said *T. B.* and against the peace of our lord the now king, &c. And whereupon the said *T. B.* by *R. F.* his attorney complaineth, That the said *T. H.* on the 1st day of *January* in the year of our Lord 1772, and on several other days and at several other times between that day and the 23d day of *April* in the year of our Lord 1777, with force and arms, &c. the trees of him the said *T. B.* *to wit*, 100 oaks, 100 ashes, 100 elms, 100 beeches, and 100 maples, growing in the several closes, called *K. P. B.* &c. at *C.* aforesaid, to the value, &c. felled and cut down, and the timber and wood, (*to wit*, 200 cart-loads of timber, and 200 cart-loads of wood) therefrom coming and arising, took, carried away, and converted to his own proper use, and the underwood and bushes of him the said *T. B.* (*to wit*, 200 cart-loads of underwood, and 200 cart-loads of bushes) growing in the said closes, of the value, &c. cut down and carried away; and other enormities, &c. to the grievous damage, &c. and against the peace, &c. whereby the said *T. B.* saith, he is detrimented and hath sustained damage to the value of 40*l.* and thereof he bringeth this suit, &c.

Declaration in
trespafs for
shooting a grey-
hound, &c.

Leicestershire, } *H. R.* late of, &c. was attached to an-
 to wit, } swer *B. D.* in a plea, wherefore
with force and arms, a certain greyhound bitch, and a
certain other bitch of the said *B.* of the price of 10*l.* at
M. aforesaid in *M.* aforesaid in the county aforesaid, with
a gun he shot at and killed, whereby the said *B.* not only
lost the said bitches, but also certain young whelps, *to*
wit, five young whelps of the said greyhound bitch, and
certain young whelps, *to wit*, five young whelps of the
said other bitch, which died for want of the said bitches
to suckle them, *to wit*, at *M.* aforesaid, and a certain
other greyhound bitch, and a certain other bitch of the
said *B.* late found at *M.* aforesaid, of the price of 10*l.* he
shot at, hit, struck, smote and wounded, by means
whereof the last mentioned two bitches afterwards at *M.*
aforesaid died, whereby the said *B.* not only lost the said
two last mentioned bitches, but also certain other young
whelps, *to wit*, five other young whelps of the said last
mentioned greyhound bitch, and certain other young
whelps, *to wit*, five other young whelps of the other of
the

the two last mentioned bitches, which afterwards died for want of the two last mentioned bitches to suckle them, *to wit*, at *M.* aforesaid, and did other wrongs to the said *B.* to the great damage of the said *B.* and against the peace of our sovereign lord the king that now is, &c. *And whereupon* the said *B.* by *J. B.* his attorney complaineth, that the said *H.* on the 15th day of *January* in the year of our Lord 1776, with force and arms, &c. a certain greyhound bitch and a certain other bitch of the said *B.* of the price of 10*l.* then found at *M.* aforesaid, with a gun he shot at and killed, whereby the said *B.* not only lost the said bitches, but also certain young whelps, *to wit*, five young whelps of the said greyhound bitch, and certain young whelps, *to wit*, five young whelps of the other of the said bitches, which afterwards, *to wit*, the same day and year at *M.* aforesaid, died for want of the said bitches to suckle them; and a certain other greyhound bitch, and a certain other bitch of the said *B.* then found at *M.* aforesaid, of the price of 10*l.* shot at, hit, struck, smote and wounded, by means whereof the last mentioned two bitches afterwards, *to wit*, the same day and year, at *M.* aforesaid died; whereby the said *B.* not only lost the two last mentioned bitches, but also certain other young whelps, *to wit*, five young whelps of the last mentioned greyhound bitch, and certain other young whelps, *to wit*, five young whelps of the other of the two last mentioned bitches, which afterwards, *to wit*, the same day and year, died for want of the two last mentioned bitches to suckle them, *to wit*, at *M.* aforesaid, and did other wrongs to the said *B.* to the great damage of the said *B.* and against the peace of our said sovereign lord the king that now is; whereby the said *B.* saith, that he is injured and damnified to the value of 10*l.* and thereof he bringeth suit, &c.

And the aforesaid *H.* by *S. S.* his attorney cometh and defendeth the force and injury when, &c. *And* as to the coming with force and arms, and the whole trespass aforesaid above supposed to be done, except the shooting at and killing of the said greyhound bitch in the said declaration first mentioned, saith, that he is not guilty; and of this he putteth himself upon the country; and the said *B.* likewise, &c. ——— *And* as to the shooting at and killing of the said greyhound bitch in the said declaration first mentioned, above supposed to be done, the aforesaid *H.* saith, that the said *B.* ought not to have his aforesaid action thereof against him, because he saith, that Sir *W. D.* bart. long before the said time when, &c. and

Plea as to part,
Not guilty.

Issue.

As to the residue, that the greyhound used to haunt a park, and to hunt, &c. the deer, and being at the time when, &c.

there for that
purpose, deſt.
as park-keeper
juſtifies the
ſhooting her.

and at the ſaid time when, &c. was and ſtill is poſſeſſed of and in a certain ancient park called *B. Park* in *M.* aforeſaid, in which ſaid park long before the ſaid time when, &c. and at the ſaid time when, &c. were great numbers of deer, of which park the aforeſaid *H.* before the ſaid time when, &c. and at the ſaid time when, &c. was keeper, and had the care and cuſtody thereof; and the ſaid *Sir W.* being ſo as aforeſaid poſſeſſed of the ſaid park, the ſaid greyhound bitch at divers times before the ſaid time when, &c. was uſed to haunt the ſaid park and to hunt, chaſe and drive the deer there, in order to bite, wound and kill them, to the great hurt and damage of the ſaid deer; and at the ſaid time when, &c. was in the aforeſaid park for the purpoſe aforeſaid; whereupon the aforeſaid *H.* as keeper and ſervant of the aforeſaid *Sir W.* and by his command at the ſaid time when, &c. in the ſaid park for the preſervation of the ſaid deer there, did ſhoot at and kill the ſaid greyhound bitch there, as it was lawful for him to do; which is the ſame ſhooting at and killing of the ſaid greyhound bitch in the ſaid declaration firſt mentioned, whereof the ſaid *B.* doth above in that behalf complain againſt him; and this he is ready to verify; whereupon he prayeth judgment if the ſaid *B.* ought to have his aforeſaid action thereof againſt him, &c.

Replication,
that he did it de
injuria ſua pro-
pria abſq;
tali cauſa,

And the ſaid *B.* as to the ſaid plea of him the ſaid *H.* as to the ſhooting at and killing of the ſaid greyhound bitch in the ſaid declaration firſt mentioned by him the ſaid *H.* committed, above pleaded in bar, ſaith, that he by any thing above alledged by the ſaid *H.* in pleading ought not to be barred from having his ſaid action thereof againſt him, becauſe he ſaith, that true it is, that the ſaid *Sir W. D. bart.* long before the ſaid time when, &c. and at the ſaid time when, &c. was and ſtill is poſſeſſed of and in the ſaid park called *B. Park* in *M.* aforeſaid, and that within the ſaid park long before the ſaid time when, &c. and alſo at the ſame time when, &c. there were a great number of deer, and that the ſaid *H.* before the ſaid time when, &c. and at the ſaid time when, &c. was keeper, and had the care and cuſtody thereof, in manner and form as the ſaid *H.* hath above by his pleading alledged: But the ſaid *B.* further ſaith, that the ſaid *H.* upon the ſaid 15th day of *January* in the ſaid year of our Lord 1776, at *M.* aforeſaid, of his own wrong, and without the reſt of the cauſe by him above alledged, with a gun ſhot at and killed the ſaid greyhound bitch of the ſaid *B.* in the ſaid declaration firſt above mentioned, as the ſaid *B.* above thereof complaineth againſt him;

him; and this he prayeth may be inquired of by the country: *And* the said *H.* likewise, &c. *Therefore* as well to try this issue as the said other issue between the parties aforesaid above joined, the sheriff is commanded, &c.

Issue.
Venire
awarded.

Herefordshire, } *W.* *H.* late of, &c. and *M.* his wife,
to wit, } were attached to answer *M. P.*
widow, of a plea, wherefore the said *M.* the wife of the
said *W.* with force and arms, at *Ross* in the said county
of *H.* took and carried away the corn in the straw of the
said *M. P.* of the value of 30*l.* there lately found, and
converted and disposed thereof to the use of the said *W.*
and other injuries to her did, to the great damage of the
said *M. P.* and against the peace of our lord the present
king: *And* whereupon the said *M. P.* by *J. B.* her attorney
complaineth that the said *M.* the wife of the said *W.* on
the 20th day of *August* in the year of our Lord 1776,
with force and arms, at *Ross* aforesaid, the corn of the
said *M. P.* in the straw, that is to say, 50 cart-loads of
wheat in the straw, 50 cart-loads of rye in the straw,
and 50 cart-loads of mongcorn in the straw of the said
M. P. of the value, &c. there lately found, took, carried
away, and converted and disposed thereof to the use of
the said *W.* and other injuries, &c. to the great damage,
&c. and against the peace, &c. wherefore she saith that
she is injured and hath damage to the value of 40*l.* and
thereof she bringeth this suit, &c.

Declaration in
trespass against
baron and feme
for taking away
corn in the
straw by the
wife, and con-
verting it to the
husband's use.

And the said *W.* and *M.* his wife, by *J. K.* their attor-
ney, come and defend the force and injury when, &c.
And as to the coming with force and arms and whatever
is against the peace of his present majesty, say that the
said *M.* the wife of the said *W.* is not guilty thereof as
the said *M. P.* hath above complained against them; and
thereupon they put themselves upon the country; *and*
the said *M. P.* doth so likewise. *And* as to the residue of
the said trespass above supposed to be done by the said *M.*
the wife of the said *W.* the said *W.* and *M.* his wife say,
that the said *M. P.* ought not therefore to have her said
action against them, because they say that the said *M. P.*
before the said time when, &c. to wit, on the 19th day
of *August* in the year of our Lord 1776, aforesaid, at *Ross*
aforesaid, licensed the said *M.* the defendant to take and
carry away the said corn, and to convert and dispose
thereof to the use of the said *W.* by virtue of which said
licence she the said *M.* the defendant afterwards, to wit,
at the said time when, &c. took and carried away the
said corn and converted and disposed thereof to the use

Plea, as to part
Not guilty.

Issue.
As to the resi-
due, that the
plaintiff licensed
her to take
away the corn,
&c.

of the said *W.* her husband, as it was lawful for her to do; which are the residue of the said trespasss, of which the said *M. P.* hath above complained against them; and this they are ready to verify: Wherefore they pray judgment if the said *M. P.* ought therefore to have her said action against them, &c.

Replication, de
injuria sua pro-
pria.

And the said *M. P.* as to the said plea of the said *W.* and *M.* his wife, as to the residue of the trespasss aforesaid, done by the said *M.* the wife of the said *W.* above in bar pleaded, saith that she the said *M. P.* by reason of any thing by the said *W.* and *M.* in the plea aforesaid above alledged, ought not to be precluded from having her action aforesaid thereof against them, because she the said *M. P.* saith that the said *M.* the wife of the said *W.* on the day and year in the said declaration mentioned, of her own wrong, at *Ross* aforesaid, the said corn in the straw of the said *M. P.* there lately found, took, and carried away and converted and disposed thereof to the use of the said *W.* in manner and form as the said *M. P.* hath above complained; *without this*, that the said *M. P.* licensed the said *M.* the defendant to take and carry away the said corn, and to convert and dispose thereof to the use of the said *W.* her husband, in manner and form as the said *W.* and *M.* his wife in the said plea have above alledged; and this she is ready to verify: Wherefore as the said *W.* and *M.* his wife have above acknowledged the committing of that trespasss by the said *M.* the defendant, the said *M. P.* prayeth judgment and her damages aforesaid, occasioned by the committing of that trespasss, to be adjudged to her, &c.

Traverse.

Rejoinder.

And the said *W.* and *M.* his wife say as before, that the said *M. P.* licensed the said *M.* the defendant to take and carry away the said corn and to convert and dispose thereof to the use of the said *W.* her husband, as the said *W.* and *M.* his wife in their said plea have above alledged; and thereupon they put themselves upon the country; and the said *M. P.* likewise: *Therefore*, &c.

Issue.

Hil. 36, 37 Car. 2. C. B. 1683.

Declaration in
trespass for the
recovery of
mesne profits.
Brownl. Ent.
493.

Yorkshire, } *E. L.* late of *Marr* in the county aforesaid,
to wit, } widow, was attached to answer *G. N.*
gent. in a plea, wherefore with force and arms, into the
manor of *Marr* with the appurtenances, and into 20 mes-
suages, 10 cottages, 400 acres of arable land, 400 acres
of meadow, and 400 acres of pasture, with the appur-
tenances of the said *G.* situate, lying and being in *Marr*,
Bentley

Bently and *Thorpe* in *Balne*, she broke and entered, and him the said *G.* from the possession and occupation of the manor and tenements aforesaid, with the appurtenances, from the second day of *October* in the 32d year of the reign of our lord the present king, until the 4th day of *March* in the 35th year of the reign of our said lord the present king, expelled and amoved; and she the said *E.* the whole profits of the manor and tenements aforesaid, from the said 2d day of *October* in the 32d year aforesaid until the 4th day of *March* in the 35th year aforesaid, to the use of the said *E.* had and received; whereby the said *G.* the whole profit, benefit and advantage of the manor and tenements aforesaid by the whole time aforesaid lost, and the said *G.* from the receipt of the profits of the manor and all the tenements aforesaid by reason thereof was hindered, and other injuries to him did, to the great damage of the said *G.* and against the peace of our lord the present king, &c. And whereupon the said *G.* by *W. D.* his attorney complaineth, that the said *E.* on the 2d day of *October* in the 32d year of the reign of our sovereign lord *Charles II.* now king of *England*, &c. with force and arms, &c. into the manor of [as before to] was hindered, and other injuries, &c. to the great damage, &c. and against the peace, &c. Whereupon he saith, that he is the worse, and hath damage to the value of 600l. and thereof he bringeth suit, &c.

And the said *E.* by *C. D.* her attorney, cometh and defendeth the force and injury when, &c. And as to coming with force and arms, or whatever that is against the peace of our said lord the present king, and also the whole trespass aforesaid, except in one messuage, 60 acres of land, 40 acres of pasture, and 20 acres of meadow, with the appurtenances, in *Marr* aforesaid, parcel of the tenements in the declaration aforesaid specified; and as to any trespass in the said messuage, 60 acres of land, 40 acres of pasture, and 20 acres of meadow, with the appurtenances, in and before the 23d day of *January* in the 32d year of the reign of our sovereign lord *Charles II.* now king of *England*, &c. she the said *E.* saith that she is not guilty thereof; and of this she putteth herself upon the country; and the said *G.* likewise, &c. And as to the said trespass in the said one messuage, 60 acres of land, 40 acres of pasture, and 20 acres of meadow, with the appurtenances above specified to be done, the said *E.* saith, that the said *G.* ought not to have or maintain his said action thereof against her, because she saith that she long before the said *G.* had any thing in the tenements last mentioned, with the appurtenances, to wit, on the 10th day of *June* in the year of our Lord 1674, one *E. L.*

Plea,
Not guilty to
part.

Issue.
As to the residue.

That long before plaintiff had any thing in the tenements, one *E. L.* was seised

thereof in fee,
and devised
them to E. wife
of T. earl of H.
and M. late
wife of R. earl
of S. and their
heirs for ever.

E. L. dies seised.

E. and M.
enter.

E. marries T.
earl of H.

M. marries R.
earl of S.

Colour given to
the plaintiff,
who enters.

Defendant by
command of the
earl of H. and
the earl of S.
enters on plain-
tiff.

gent. was seised of the tenements with the appurtenances last mentioned, in his demesne as of fee. And the said E. being so thereof seised, before the said time in which, &c. to wit, on the 10th day of *August* in the year of our Lord 1674, at *Marr* in the county aforesaid, made his testament and last will in writing, and thereby willed and devised the said tenements with the appurtenances to E. L. now the wife of *Theophilus* earl of *Huntingdon*, and M. L. deceased, late the wife of *Robert* earl of *Scarfsdale*, and to their heirs for ever; And afterwards, to wit, on the day and year last mentioned, there died seised of the said tenements, with the appurtenances in form aforesaid. After whose death, to wit, on the 24th day of *January* in the 32d year aforesaid, the said E. and M. into the said tenements, with the appurtenances last mentioned, entered and were thereof seised in their demesne as of fee, by virtue of the said devise; and being so thereof seised, the said E. then at *Marr* aforesaid, took for her husband the said *Theophilus*, earl of *Huntingdon*, and the said M. then and there took for her husband the said *Robert*, earl of *Scarfsdale*, whereby the said earl of *Huntingdon* and E. in the right of the said E. and the said earl of S. and M. in the right of the said M. on the said 24th day of *January* in the year aforesaid, were seised of the tenements aforesaid last mentioned, with the appurtenances, in their demesne as of fee. And the said G. claiming the said tenements, with the appurtenances, by colour of a certain deed of feoffment to him and his heirs thereof made by the said E. L. before the day of the making the said testament, when nothing of the said tenements, with the appurtenances, ever passed into the possession of the said G. by the said deed of feoffment, after the death of the said E. L. to wit, on the 24th day of *January* in the 32d year aforesaid entered into the same tenements, with the appurtenances. Upon which said possession of the said G. thereof the said E. L. now defendant, by the command of the said earl of H. and earl of S. on the same 24th day of *January* into the said tenements last mentioned, with the appurtenances, re-entered, and the said G. from the possession and occupation of the same tenements, with the appurtenances, then expelled and amoved; and the profits of the same tenements last mentioned from thence for all the residue of the said time in the said declaration mentioned had and received, as she well might, which are the same residue of the said trespass, whereof the said G. above now complaineth; and this she is ready to verify: Wherefore she prayeth judgment if the said G. ought

G. ought to have or maintain his said action thereof against her, &c.

And the said G. saith that the said E. ought not to be admitted to the plea in bar above pleaded, as to the said messuage, 60 acres of land, 40 acres of pasture, and 20 acres of meadow, because he saith that after the said time in the said declaration mentioned, in which the said trespass in the said declaration above is supposed to be done by the said E. heretofore, *to wit*, in the term of *St. Hilary* in the 32d and 33d years of the reign of our sovereign lord *Charles II.* now king of *England*, &c. in the court of our said lord the present king before the then justices of our said lord the king of the bench (the said court being then at *Westminster* in the county of *M.*) the said E. by the name of *E. L.* late of *Marr*, widow, and one *W. H. G. G. R. H. M. V. J. H.* and *J. S.* were attached to answer the said G. N. in a plea, wherefore with force and arms the manor of *Marr*, with the appurtenances, and 20 messuages, 10 cottages, 400 acres of land, 400 acres of meadow, and 400 acres of pasture, with the appurtenances in *Marr, Bentley* and *Thorpe* in *Balne* in the county of *York*, which *B. G.* esq; and *A.* his wife had demised to the said G. for a term which was not then passed, they entered, and him the said G. from his said farm ejected, and other injuries to him did, to the great damage of the said G. N. and against the peace of our said lord the present king; and whereupon the said G. N. by *T. P.* then his attorney complained, that whereas the said *B.* and *A.* on the 1st day of *October* in the 32d year of the reign of our said lord the king at *Marr* aforesaid, had demised to the said G. N. the manor and tenements aforesaid, with the appurtenances, to have and to hold the manor and tenements aforesaid, with the appurtenances, to the said G. and his assigns, from the feast of *St. Michael* the archangel then last past, until the full end and term of five years then next following and fully to be complete and ended; by virtue of which said demise the said G. N. had entered the manor and tenements aforesaid, with the appurtenances, and was thereof possessed, and being so thereof possessed, the said *E. W. G. G. R. M. J.* and *J.* afterwards, *to wit*, on the said 1st day of *October* in the 32d year aforesaid, with force and arms, &c. the manor and tenements aforesaid, with the appurtenances, in form aforesaid demised to the said G. N. for a term which was not then passed, had entered, and him from his said farm had ejected; and other injuries, &c. to the great damage, &c. and against the peace, &c. Wherefore he then said that he was injured, and had damage to the value

Replication,
defendant ad
placitum prœd'
admitti non
debet.

In Hil. 32 &
33 Car. II.

Plaintiff as lessee of *B. G.* and *A.* his wife brought ejectment against defendant and six others.

Who pleaded
Not guilty.

Process conti-
nued.

Nisi prius.

Trial.

Verdict for
plaintiff,

And judgment.

value of 100l. and thereof he then brought suit, &c. And the said *E. W. G. G. R. M. J.* and *J.* by *T. L.* then their attorney, came and defended the force and injury when, &c. and then said that they were in nothing guilty of the trespass and ejectment aforesaid, as the said *G. N.* above declared against them, and of that they then put themselves upon the country; and the said *G. N.* then did so likewise. And thereupon the said process was in such manner continued between the parties aforesaid, in the plea aforesaid, by the jurors being respited between them until from the day of *Easter* in 15 days then next following, unless the justices of our lord the king assigned to take the assises in the county aforesaid, according to the form of the statute, *to wit*, on *Saturday* the 5th day of *March* then next before the said day, *to wit*, from the day of *Easter* in 15 days, at the castle of *York* in the county of *York* aforesaid, had first come; at which said assises, on the day and at the place aforesaid held before Sir *William Dolben*, knt. one of the justices of our said lord the king assigned to hold pleas before the king himself, and Sir *William Gregory*, knt. one of the barons of the exchequer of our said lord the king, justices of our lord the king assigned to take the assises in the county aforesaid of *York*, the said issue was tried, and the jurors then and there chosen, tried and sworn to try the said issue, said upon their oath, that *E. W. G. G. R. M. J.* and *J.* were guilty of the trespass and ejectment aforesaid, in manner and form as the said *G. N.* complaineth against them; And thereupon it was in such manner proceeded, that it was considered by the same court of the bench, that the said *G. N.* recovered against the said *E. W. G. G. R. M. J.* and *J.* the possession of his said term in the manor and tenements aforesaid, with the appurtenances, then to come; and that the said *E. W. G. G. R. M. J.* and *J.* should be taken, as by the record of the said recovery now remaining in the court of the bench aforesaid more fully appeareth: And the said *G. N.* further saith, that the said messuage 60 acres of land, 40 acres of pasture, and 20 acres of meadow, whereof the said *G. N.* now complaineth against the said *E.* are parcel of the messuages, lands and tenements mentioned in the said recovery, and not other nor different: Wherefore the said *G. N.* prayeth judgment if the said *E.* during the said term in the said record mentioned ought to be admitted to the said plea, contrary to the said recovery.

And

And the said *E.* as at first saith, that the said *T.* earl of *H.* and *E.* his wife, in the right of the said *E.* and the said *R.* earl of *S.* and *M.* his wife, in the right of the said *M.* on the 24th day of *January* in the 32d year aforesaid, and continually afterwards, until the 4th day of *March* in the said 35th year of the reign of the lord *Charles II* late king of *England*, &c. were seised in their demesne, as of fee, of the tenements aforesaid, with the appurtenances last mentioned, in manner and form aforesaid, as the said *E.* above in pleading hath alledged; and that she the said *E. L.* as servant of the said earls and their wives entered into the tenements aforesaid, with the appurtenances, and held the same as she the said *E. L.* above in pleading hath alledged: Wherefore for that the said *G. N.* hath not denied the said matter pleaded in bar by the said *E.* nor answered thereto, the said *E. L.* prayeth judgment, and that the said *G. N.* may be precluded from his said action, &c.

Rejoinder,

That the earls in right of their wives were seised, and defendant as their servant entered, &c.

And the said *G.* as to the said plea of the said *E.* above in rejoining pleaded, saith, that the plea in manner and form aforesaid above pleaded, and the matter therein contained, are not sufficient in law to preclude the said *G.* from having his said action against the said *E.* to which the said *G.* has no need, nor is he bound by the law of the land in any manner to answer; and this he is ready to verify: wherefore for want of a sufficient plea of the said *E.* in this behalf the said *G.* prayeth judgment and his said damages, by the occasion aforesaid, to be adjudged to him, &c.

Demurrer.

And the said *E.* saith, that her said plea in manner and form aforesaid above in rejoining pleaded, and the matter therein contained, are good and sufficient in law to preclude the said *G.* from having his said action against the said *E.* Which said plea, and the matter therein contained, the said *E.* is ready to verify and prove, as the court, &c. And because the said *G.* hath not answered to the said plea, nor any ways hitherto denied the same, the said *E.* as at first, prayeth judgment; and that the said *G.* may be precluded from having his said action against the said *E.* &c. And because the justices here will advise themselves of and upon the premisses, whereof the said parties have put themselves upon the judgment of the court, before they give judgment thereupon, day is given to the parties aforesaid here, until from the day of *Easter* in 15 days, to hear their judgment thereupon; for that the said justices here are not yet, &c. And because it is convenient that one taxation

Joinder.

Continuance.

Unica taxatio.

Ven. fac. tam
ad triand.
quam ad in-
quirend'.

Jury respited.

Postea.

Al' de circum-
stantibus.

Verdict for the
plaintiff.

tion be made of the damages for the whole trespass in one writ specified: *Therefore* as well to try the said issue above joined to be tried by the country, as to inquire of the damages by occasion of the premisses, whereof the said parties have put themselves upon the judgment of the court as aforesaid, if judgment thereupon should happen to be given for the said G. *It is commanded* to the sheriff, that he cause to come here on the octave of the purification of the blessed *Mary*, twelve, &c. by whom, &c. and who neither, &c. to recognize, &c. because as well, &c. *At which day* the jury between the parties aforesaid, in the plea aforesaid above by the country to be tried, was thereupon respited between them here until this day, *to wit*, to the said 15 days of *Easter* then next following, unless the justices of our lord the king assigned to take the assizes in the county aforesaid, by form of the said statute, on *Monday* the 9th day of *March* last past at the castle of *York* in the county aforesaid shall first come. *And now here* at this day cometh as well the said G. as the said E. by their attornies aforesaid; and the said justices of assize, before whom, &c. sent here their record in these words: *Afterwards*, on the day and at the place within contained, before Sir *Edward Atkins*, knight, one of the barons of the *Exchequer* of our lord the king, and Sir *Robert Wright*, knight, one other of the barons of the *Exchequer* of our said lord the king, justices of our said lord the king assigned to take the assizes in the county of *York*, by form of the statute, &c. cometh as well the within named G. N. as the within written E. L. by their attornies within contained; and the jurors of the jury, whereof mention is within made, being demanded, some of them, *to wit*, G. R. T. P. G. B. R. T. C. R. W. P. and J. S. came and were sworn on that jury; and because the residue of the jurors of that jury did not appear, *Therefore* others of those standing around, by the sheriff of the county aforesaid hereunto chosen at the request of the said G. N. and by the command of the said justices, are added a-new, whose names are affiled in the within written panel, according to the form of the statute in such case made and provided; and the jurors so added a-new, *to wit*, W. P. M. W. J. H. J. D. and J. P. being demanded, also come, who to speak the truth of the within contents, together with the said other jurors first impaneled and sworn, being chosen, tried and sworn, *As to the issue* between the parties aforesaid within joined, whereof the said E. said that she is not guilty thereof, they say upon their oath, that the said E. is guilty thereof

of in manner and form as the said G. within complains against her; and they assess the damages of the said G. by occasion thereof, over and above his costs and charges by him about his suit in this behalf expended, to 300l. *And as to* the residue of the trespass within mentioned, whereof the said parties have within put themselves on the judgment of the court, if it happens that judgment therein be given for the said G. against the said E. the said jury assess the damages of the said G. by the occasion of that trespass, over and above his costs and charges by him in and about his suit in this behalf expended, to 200l. and for those costs and charges to 40s. *And* because the justices here will further advise themselves of and upon all and singular the said premises before they give judgment thereon, day is further given to the parties aforesaid here until on the morrow of the Holy Trinity, to hear their judgment thereupon, for that the said justices here are not yet, &c. *At which day* here came as well the said G. as the said E. by their attornies aforesaid, and because the justices here will further advise themselves of and upon all and singular the premises aforesaid before they give judgment thereon, day is further given to the said parties here until from the day of St. Michael in three weeks, to hear their judgment thereon, for that the said justices here are not yet, &c. *At which day*, here cometh as well the said G. as the said E. by their attornies aforesaid; whereupon all and singular the said premises being seen, and by the court here fully understood, it seemeth to the said justices that the plea of the said E. in manner and form aforesaid above in rejoining pleaded, and the matter therein contained, are not sufficient in law to preclude the said G. from having his said action, as the said G. within hath alledged, *It is considered*, that the said G. recover against the said E. his several damages aforesaid to 500l. and the said 40s. assessed by the said jury in form aforesaid, and also 28l. to the said G. at his request for his said costs and charges by the court here of increase adjudged, which said damages in the whole amount to 530l. and the said E. be taken, &c.

Contingent damages on the demurrer.

Continuance.

Continuance.

Judgment for the plt. on the demurrer, &c.

Affirmed on error.

Gloucester-

Declaration in
trespafs for cut-
ting down a
grove which
was an orna-
ment and
defence to a
messuage.

Plt. an infant
by prochein
amy.

Gloucestershire, *C. W.* esq; was attached to answer *T.*
to wit, *J.* esq; of a plea, wherefore where-
as the said *T.* by the space of seven years now last past
was and still is seised in his demesne as of fee, of and
in one capital messuage called *Sulley*, and of and in a
certain grove of timber trees, *to wit,* oaks, ashes, elms
and beeches, lying contiguous to the same messuage,
with the appurtenances, in the parish of *Lydney* in the
county aforesaid, which said grove was not only an or-
nament, but also a defence to the said messuage against
winds, storms and tempests, the said *C.* contriving and
intending to deprive the said *T.* of the benefit and ad-
vantage of the said grove, with force and arms entered
into the said grove, and cut down and carried away
trees to the value of 400l. then growing there, and did
other injuries to the said *T.* to the great damage of the
said *T.* and against the peace of our lord the present king,
&c. *And whereupon* the said *T.* by *E. J.* who is admitted
by the court of our lord the king here to prosecute for
the said *T.* being under the age of 21 years, as next
friend of the said *T.* complaineth, that *whereas* the said
T. by the space of seven years now last past was and still
is seised in his demesne as of fee of and in one capital
messuage called *Sulley*, and of and in a certain grove of
timber trees, *to wit,* oaks, ashes, elms and beeches, ly-
ing contiguous to the said messuage, with the appurten-
ances, in the parish of *Lydney*, in the county aforesaid:
which said grove was not only an ornament to the said
messuage, but also a defence to the said messuage against
winds, storms and tempests, the said *C.* maliciously con-
triving and intending to deprive the said *T.* of the be-
nefit and advantage of the said grove, on the — day
of, &c. with force and arms entered into the said grove,
and cut down and carried away the trees then growing
there, *to wit,* 200 oaks, 200 ashes, 200 elms, and 200
beeches, to the value of 400l. in continuing the said tresp-
pafs at divers days and times from the said — day of,
&c. until the day of suing forth the original writ of the said
T. to wit, the — day of, &c. and other injuries,
&c. to the great damage, &c. and against the peace, &c.
wherefore he saith, that he is injured and hath damage
to the value of 1000l. and thereof he bringeth suit,
&c.

Easter

Easter 17 Geo. 3.

Common Pleas.

Surrey, *N.* C. late of *Rygate* in the said county, *to wit.* maltster, was attached to answer to *W.* in a plea wherefore with force and arms he assaulted the said *W.* at *Rygate* afore said in the said county, and beat, wounded and ill treated him, so that his life was greatly despaired of, and did other wrongs to the said *W.* to the great damage of the said *W.* and against the peace of our lord the king, &c. And whereupon the said *W.* who is an infant under the age of twenty-one years, by *J. W.* (his father) his next friend, admitted by the court here for that purpose, complains that the said *N.* on the fifteenth day of *April* in the year of our Lord one thousand seven hundred and seventy seven, with force and arms, *to wit.* swords, staves, knives and whips, assaulted the said *W.* at *Rygate* afore said, in the county afore said, and beat, wounded and ill treated him, so that his life was greatly despaired of, and did other wrongs to the said *W.* to the great damage of the said *W.* and against the peace of our said lord the king; whereby the said *W.* says that he is injured, and hath damage to the value of one hundred pounds. And thereupon he brings suit, &c.

Declaration by
an infant in as-
sault and bat-
tery.

And the said *N.* by *E. S.* his attorney, comes and defends the force and injury, when, &c. and as to the coming with force and arms, or whatever is against the peace of our said lord the king, says he is not guilty thereof; and of this he puts himself upon the country: And as to the residue of the said trespass above supposed to be done, the said *N.* says that the said *W.* ought not to have his said action thereupon against him because he says that at the said time in which, &c. at *Rygate* afore said in the county afore said, he the said *N.* was possessed of a certain horse as of his own property, and the said *N.* being so thereof possessed, and — the wife of the said *N.* then and there riding upon the said horse, the said *W.* at the said time in which, &c. at *Rygate* afore said

Plea, molliter
manus imposuit
in defence of
his wife, the
plaintiff strik-
ing, &c. the
horse whereon
she rode.

said in the county aforesaid, without any reasonable cause, and against the law of the land, with force and arms struck at and beat the said horse then and there being, the said — the said wife of the said *N.* then and there riding upon the said horse as aforesaid, by reason of which the said horse was very much startled and frightened, so that the said — the wife of the said *N.* was in great danger of being thrown from off the said horse, and the said *W.* then and there several times endeavoured to strike, startle and frighten the said horse; whereupon the said *N.* to prevent the said *W.* from further striking, startling and frightening the said horse, and in defence of his said wife then and there, gently laid his hands upon the said *W.* as it was lawful for him to do, which said gently laying his hands upon the said *W.* for the cause aforesaid, is the residue of the said trespass, whereupon the said *W.* above complains against him. And this he is ready to verify: Wherefore he prays judgment if the said *W.* ought to have his said action thereupon against him, &c.

Geo. Wilson.

Hil. 18 Geo. II.

Common Pleas.

Declaration in
trespass for kill-
ing a pig and a
hog.

Suffex, *J. W. R.* late of — and *C.* his wife, were attached to answer *J. M.* in a plea, wherefore the said *C.* with force and arms, struck, stabbed and wounded with a spit a * pig and a hog of the said *J.* of the price of forty shillings, at — aforesaid, so that the said pig and hog died thereof, and wounded and killed another pig and another hog of the said *J.* of the price of forty shillings there found, and did other wrongs to the said *J.* to the great damage of the said *J.* and against the peace of the lord the king. And whereupon the said *J.* by — his attorney complains,

* In trespass the writ was *quare bona & catalla, sua cepit*: The count was of a cow; on not guilty pleaded verdict *pro quer.* but judgment arrested. *R. Raym. A.*

plaints, that the said C. on the tenth day of *September* in the year of our Lord 1778, with force and arms struck, stabbed and wounded with a spit, a pig and a hog of the said J. of the price of forty shillings at ———— afore said, so that the said pig and hog died thereof, and wounded and killed another pig and another hog of the said J. of the price of forty shillings, there found, and did other wrongs to the said J. to the great damage of the said J. and against the peace of the said lord the king, whereby the said J. says that he is injured, and hath damage to the value of ten pounds. And thereupon he brings suit, &c.

To which the defendant pleaded the general issue.

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Ex. W. & T.

1813/09

